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No. 14626

United States *See Vol.*
Court of Appeals *3031*
For the Ninth Circuit. *3032*
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JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Corporation; HALL DEVELOPMENT COMPANY, C.A., a Corporation; WEATHERFORD, LTD., a Corporation; WEATHERFORD INTERNACIONAL, S.A., DE CV., a Corporation; NEVADA LEASEHOLD CORPORATION, a Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Corporation,

Appellants,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellees.

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Appellants,

vs.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation, et al.,

Appellees,

Transcript of Record
In Nine Volumes

Volume VII
(Pages 3017 to 3384)

Appeals from the United States District Court for the
Southern District of California,
Central Division.

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(Testimony of William A. Doble.)

Q. Mr. Doble, I believe we were last discussing the Acme scratcher which you had made, or had made by Adams-Campbell Company. Was a second set of such Acme scratchers made?

A. Yes, sir.

Q. And that second set of Acme scratchers is illustrated by a set of photographs, and also the scratchers themselves were sent to the Patent Office, I believe; isn't that correct?

A. Yes, sir; that is correct.

Q. Those scratchers, that second set of Acme scratchers, are shown by what photographs, Mr. Doble? [3539]

* * *

A. I find in the list of exhibits the Exhibit CD-1, which is a physical exhibit of the Acme 5½-inch scratcher; and in Defendants' Exhibit CE-1, a physical exhibit of a 3½-inch Acme scratcher.

Q. Mr. Doble, those second Acme scratchers differed, did they not, from the Acme scratchers that you have described upon which you made the first tests; is that correct?

The Witness: May I have the question read, please?

(Question read by the reporter.)

A. That is correct to this extent: The angular axes of the coils formed in each of the scraper wires was angled so that it was not—that is, the axis of the coil did not coincide with a radial line

(Testimony of William A. Doble.)

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(Testimony of William A. Doble.)
of the scratcher body. Otherwise they are the same. [3545]

Q. Just to take an illustration of what you are talking about so the court may understand it, I will place before you a scratcher which is not intended to be the one I am talking about—it is Exhibit EF, so the record will show. This scratcher has wires on it and it has coils in it. What do you mean by the radial extent of those coils, Mr. Doble?

A. I have in my hand Defendants' Exhibit EF, which comprises a cylindrical collar or sleeve. The cylindrical collar is provided with two sets of holes projecting through the periphery of the collar. Extending through each of the holes in the collar is a coiled spring. And that coiled spring is formed in each one of the wire fingers or bristles of the scratcher.

Now, that coil or the coil for each of the scratcher wires or bristles is wound around an axis. The axis or axes of the coils of the first Acme scratchers are made, some were approximately radial and some were slightly divergent from radial. And by "radial" I mean the axial line of the coil if projected inwardly would pass through the center of the diameter of the sleeve or body portion of the scratcher.

There was some question in regard to the way those particular coils were related to the scratcher body, so I had a second set of the Acme-type scratchers made in which [3546] the direction of the axis of each of the coils was purposely formed

(Testimony of William A. Doble.)

so that it would not lie on the normal axis of the scratcher body which passed through the center of the cylindrical sleeve.

Q. And do these photographs which you have referred to heretofore show the second form of Acme scratcher which was made with the coils not radial, or, as it has sometimes been referred to, canted coils?

A. I referred to physical exhibits, Mr. Lyon, not photographs. But there are photographs of those physical exhibits, I believe, and those photographs do show that the axes of the coils are canted, as you say, with relation to or respect to the true axis or the true radii passing through the center of the cylindrical body. [3547]

* * *

Q. Mr. Doble, you were speaking of the Acme scratchers at the time of adjournment. I place before you Exhibits for identification CH and CI and CE-1 and CD-1, as well as two gauge rings, Exhibits CE-2 and CD-2, all notations being for identification, none of these particular exhibits having been before offered in evidence, and I was asking you with respect to the Acme scratchers upon which the tests you have made and the actual scratchers which were sent to the Patent Office. How do these exhibits compare, if at all, with the exhibits that were sent to the Patent Office?

* * *

A. Thank you, your Honor. Exhibits CI and

(Testimony of William A. Doble.)

CD-1 are [3550] exemplars of the Acme type of scratcher which I testified to during my opening deposition in the matter before the Patent Office.

The Court: Made by whom, if you know?

The Witness: Yes, your Honor. They were made under my direction by the Adams-Campbell Company, which firm is located down on Los Angeles Street, I think around 17th or 18th and Los Angeles Streets, in Los Angeles.

L. E. Lyon: In accordance with the instructions that you testified to last Friday?

The Witness: Yes, sir.

L. E. Lyon: All right. Now, what were these?

The Witness: Exhibits CE-1 and CH are similar to the 3½-inch and 5½-inch Acme type of scratchers which I testified to in my rebuttal depositions in the proceedings before the Patent Office.

Mr. L. E. Lyon: Now, in regard to your deposition in evidence with respect to these scratchers, it is necessary to correlate these particular exhibits with the exhibits which were offered in the Patent Office.

May it be stipulated that the witness, in speaking of the Patent Office exhibits of the 3½-inch size, is speaking about the Petitioner's Exhibit CC before the Patent Office, which corresponds with the 3½-inch first one, Mr. Doble.

Q. What is that? [3551] A. That is CI.

Q. CI—and that the gauge ring for that sample, which was Petitioner's Exhibit DD before the Patent Office, the exemplar here is—

(Testimony of William A. Doble.)

A. Exhibit CE-2.

Q. All right. Now, the larger size, the 5½-inch diameter Acme type scratcher, of the first type which you made, was Exhibit AA before the Patent Office, and that is here, Mr. Doble——

A. It is Defendants' Exhibit CD-1.

Q. And the gauge ring for that scratcher was Petitioner's Exhibit BB before the Patent Office and is here—— A. CD-2.

Q. All right. Now, the second form of scratcher, Acme scratcher, before the Patent Office, the Acme scratcher with the canted coils before the Patent Office was Exhibit IIIIII——

Mr. Scofield: Before the Patent Office?

Q. (By Mr. L. E. Lyon): —and there are two of them here. Do we have both sizes?

A. Yes, sir.

Q. I don't see it here.

A. I gave those exhibit numbers this morning, Mr. Lyon.

Mr. L. E. Lyon: Was Exhibit IIIIII the Acme type scratcher before the Patent Office? According to this list I have in front of me, it does not show which size it was. [3552]

* * *

Mr. L. E. Lyon: Well, IIIIII, we are talking about those in rebuttal, Mr. Doble, with the canted coils, yes.

The Witness: Yes, sir, and that is CH, for the 5½-inch Acme with the canted coils.

(Testimony of William A. Doble.)

Mr. L. E. Lyon: All right. That is CH.

Q. How about the 3½-inch Acme scratcher with the canted coils?

A. The 3½-inch Acme scratcher with canted coils is Defendants' Exhibit CD-1.

Q. Was that before the Patent Office?

A. I don't know.

Mr. L. E. Lyon: We will have to supply that. It is not on this list, if there was one. I mean the 3½-inch coils before the Patent Office. I am not talking about the [3553] ones here.

Q. All right. Now, Mr. Doble, these scratchers you have testified—— [3554]

* * *

Mr. L. E. Lyon: Look at your own list. CE-1 is what you have got down here. Let us let that go and straighten it out after we get time and make a stipulation.

Q. Mr. Doble, you have before you these exhibits of the Acme type scratcher and also have before you the gauge rings. What is the purpose of the gauge rings?

A. The purpose of the gauge rings was to be able to accurately check the over-all diameter across the free ends of the scratcher wires.

Q. That over-all diameter was made in accordance with the specifications of Exhibit A, I believe, is that correct? A. That is correct.

Q. And the outside diameter of the 3½-inch

(Testimony of William A. Doble.)

Acme [3556] scratcher is what? Have you got Exhibit A in front of you?

A. Yes, sir. I believe it is $8\frac{1}{4}$ inches.

Q. What is the one for the $5\frac{1}{2}$ -inch Acme scratchers?

A. The diameter of the gauge ring, Defendants' Exhibit CD-2, is $10\frac{1}{4}$ inches.

Q. Is that true of both of these models with and without the canted coils? A. Yes, sir.

Q. And both of them, the $3\frac{1}{2}$ -inch size and in both cases, will fit the $3\frac{1}{2}$ -inch gauge ring, and the $5\frac{1}{2}$ -inch sizes will fit the $10\frac{1}{4}$ -inch gauge ring, is that correct? A. Yes, sir.

Q. The scratchers, aren't they made to have a diameter greater than the inside diameter of the hole into which they are to be placed?

A. Yes, sir.

Q. Then we must assume that these particular scratchers, as advertised in Exhibit A of this outside diameter to be placed in a hole smaller than their non-use outside diameter; isn't that correct?

A. That is correct.

Q. In that case, in case they were inserted in a hole of a smaller diameter, how would they appear in comparison with the positioning of the scratcher as shown in Exhibit EL, [3557] Mr. Doble? And I believe EL was offered in evidence, was it not?

A. It is not so marked.

The Court: What is the exhibit, again?

Mr. L. E. Lyon: EL.

(Testimony of William A. Doble.)

The Clerk: This one, January 28th, admitted in evidence.

Mr. L. E. Lyon: All right. It is in evidence then, is that correct?

The Court: The card is not marked?

Mr. L. E. Lyon: No, the card is not marked.

The Court: Very well, the clerk will mark the card.

Mr. L. E. Lyon: In answering that question will you point to the portion of EL to which you have reference? I believe the best way of doing that is by the outside marked diameter, Mr. Doble.

A. I have before me Defendants' Exhibit EL and Defendants' Exhibit EL comprises a brass structure having an inner cylindrical tube or sleeve which represents or simulates the casing which is normally lowered down into a well. It has a spiral brass casing spaced from the simulated casing and the area of that outer brass casing represents—that is, the area I am referring to at this moment—represents the depth of 8,475 feet, diameter of hole 8 13/16ths. And the spacing between the simulated casing and the outer wall of the spiral casing or shell has the smallest distance [3558] between the periphery of the cylinder simulating the casing going in the well and the outer wall, and it shows the manner in which each of the wires of the scratcher are wrapped around to a more or less degree, around the body of the scratcher and then extend to have their free ends engage the outer wall of the shell case.

The next section of the outer shell case represents

(Testimony of William A. Doble.)

a depth of the well which this model illustrates of 9448 feet, diameter of the hole 14 inches and 13/16ths, and adjacent this section there will be observed that the scratcher wires, or the wires of the scratcher that is, the free ends of those wires do not engage the outer inner wall of the shell casing.

Q. Indicating what?

A. Indicating that the free ends of the scratcher wires would not engage the wall of a well bore having a diameter of 14 15/16ths inches.

* * *

Q. (By Mr. L. E. Lyon): And does that have any indication, Mr. Doble, as to the non-engaged inclination, sidewise [3559] inclination of the wires in Exhibit EL, and by that I mean this larger diameter section of EL?

A. That is correct, Mr. Lyon. It indicates that there is no force acting upon the free ends of the scratcher wires which in any way affects the angular or sidewise inclination of the wires with respect to the periphery of the outer wall or casing of the scratcher proper.

Q. The normal sidewise inclination, Mr. Doble, of the wires of Exhibit EL with respect to a tangent is how many degrees away from a tangent? Can you determine that approximately with respect to the instrument which you have in your hand?

A. I would judge, roughly, that the angle of the wires, that is, at least one of the wires—because they

(Testimony of William A. Doble.)

all appear to have slightly different angles—is in the neighborhood of 25 degrees from a true tangent.

Mr. Scofield: I object to that unless the depth is indicated; that is, I understand that there are two or three depths also indicated.

Mr. L. E. Lyon: That is where the wire is not engaging the wall of the model, Mr. Scofield.

The Court: Is that a correct description?

The Witness: Yes, sir.

The Court: Of the angle you are testifying about with what Mr. Lyon just stated? [3560]

The Witness: Maybe I did not understand it, but it seems to me that I was measuring the wire in the free portion, that is, where the ends of the wires do not engage the outer wall of the shell case; and so there is no force or pressure acting on those wires to in any way change the angular relation of those particular wires to the relation of the body of the scratcher.

The Court: And the degree of angle you gave was with reference to that?

The Witness: Yes, your Honor. And I must say it is a very rough measurement because each of the wires seems to have a different angle, oh, maybe varying between five or 10 degrees.

Q. (By Mr L. E. Lyon): Mr. Doble, if these wires were a true tangent in this model, Exhibit EL, would there be more or less wrapping around the collar in the section, for example, in indicated depth of 8475 feet?

A. There would be more wrapping of the free

(Testimony of William A. Doble.)

end of the wire around the body portion of the scratcher.

Q. Would that or would that not have any effect upon the wires balling up?

A. It would have a tendency for the wires to ball up and possibly tangle one with the other.

Q. Mr. Doble, in these models of the Acme scratcher which you have testified about what are the angle relations [3561] of those scratcher wires with respect to the tangent, and give us for each one of the models, will you?

A. Yes, sir. I will now test the angles of one of the scratcher wires on Defendants' Exhibit CI, and the wire that I am measuring has a negative tangent angle of roughly 10 degrees.

Q. What do you mean by a negative tangent angle?

A. That is, the free end of the scratcher bristle extends for the sidewise inclination closer to the body portion of the scratcher than the normal tangent would extend.

Q. Is it fair to say with respect to this Model EL that the wire that the angle makes with respect to the collar—I just want this for the purpose of comparison—is 25 degrees less than a tangent; and in the model you just measured it is 10 degrees more than a tangent? A. Yes, sir.

Q. All right; proceed with the next model.

A. I will next check the angular relation of one of these free lengths of wire extending from the scratcher Defendants' Exhibit CD-1; and, as best I

(Testimony of William A. Doble.)

can read the measurement, the tangent angle of the wire that I am measuring has a five-degree-plus angle with relation to the true tangent.

Q. Is that less or more? [3562]

A. It is less, that is, it is less if we refer it with relation to the radius extending from a true tangent. Instead of being 90 degrees from an extended portion of the radius it is 85 degrees.

Q. That doesn't do us much good. We made a comparison on EL. Is it on the side away from a tangent that EL is, or the other side?

A. EL is 25 degrees less than a tangent.

Mr. L. E. Lyon: We agreed, at least this must be further. [3563]

* * *

Q. Is this less than 90 degrees on the same side of the tangent that EL is less than a tangent?

A. No. It is on the other side.

Q. All right. Then it is five degrees more than tangent where we use EL as a basis of comparison, isn't it? A. No. I am wrong. It is less.

Q. It is on the same side with EL then, isn't it?

A. That is correct.

Q. All right. Then let us keep in mind EL and make our pluses and minuses the same as that is.

A. Yes, sir. I will now measure the angle in Defendants' Exhibit CE-1, and the tangent angle that I am measuring indicates a five-degrees-more-than-a tangent angle, relating that five degrees to the manner in which we measured the tangent angle in Defendants' Exhibit EL, I believe it was.

(Testimony of William A. Doble.)

Q. EL. A. EL.

Q. All right. Proceed with the next one. [3564]

* * *

Q. Now, the next model, Mr. Doble, give us the exhibit number in advance. Which one are you working on now? A. Defendants' Exhibit CH.

Q. All right. Now, CH is what angle?

A. As closely as I can read the angle on this Exhibit CH, for the particular wire that I am measuring, it appears to be exactly tangent.

Q. All right. Now, Mr. Doble, did you test all of these scratchers of the form of these exemplars which you have before you—and those are Exhibits CI, CE-1, CH, and CD-1?

A. Test them in what way, Mr. Lyon?

Q. Well, in apparatus similar to the test apparatus to which you have previously testified, as shown by the photographic exhibits here in evidence that you testified to Friday. A. No, sir, I have not.

Q. Which ones did you test?

A. I tested a scratcher similar to Defendants' Exhibit CI, and another scratcher similar to Defendants' Exhibit CD-1.

Q. And how did the tests of those scratchers compare [3565] with the tests you made of Jones and Berdine wall-cleaning guide, Nu-Coil, Multiflex, and Weatherford scratchers that you testified to Friday?

Mr. Scofield: Objected to as evidence not the best. I don't think there is anything in the record

(Testimony of William A. Doble.)

as to what tests were made on these particular scratchers. There are on the Jones and Berdine wall-cleaning guide, but I recall no tests made on these scratchers. It is calling for a conclusion.

Mr. L. E. Lyon: I am asking him for a comparison of the tests, your Honor, the tests he made himself.

The Court: The objection is that there is no evidence as to what tests he made.

Mr. L. E. Lyon: He has already testified that he made a test of these two scratchers on this same machine.

Q. Now, were these tests carried out in the same way, Mr. Doble? A. Yes, sir.

Q. By you?

A. Yes, sir, that is, under my direction and by me.

Q. And by the same test rings?

A. Yes, sir.

Q. Or cylinders, and the same apparatus as you testified to Friday? A. Yes, sir. [3566]

* * *

Q. Will you state briefly what the tests were that you made of these two models and give me what the results of such tests were?

The Court: These two models, Exhibits—

The Witness: CI, your Honor, and CD-1.

The Court: Exhibits CD-1 and CI for identification?

The Witness: Yes, your Honor.

Q. (By Mr. L. E. Lyon): All right.

(Testimony of William A. Doble.)

A. Defendants' Exhibit CI was placed on the simulated casing 18 of the test machine.

Q. Let me ask you this, Mr. Doble: isn't there complete testimony with respect to those, the tests you made on those two samples, in your deposition given before the Patent Office? [3567]

A. I do not remember it, Mr. Lyon.

Mr. L. E. Lyon: All right.

Q. Then proceed.

The Court: In any event, you made the same tests—

The Witness: Yes, sir.

The Court: —that you made with respect to the matters shown in the various NNNN exhibits you testified to Friday?

The Witness: Yes, sir. We have photographs showing it.

The Court: Now, the question is as to the result of those tests on Exhibits CI and CD-1.

The Witness: Yes, your Honor.

The tests were the same, namely, that the scratcher was forced into a blackened cylinder, which had been polished and then painted with showcase paint. The scratcher was progressed in each case through the cylinder. I observed the black surface and noted the lines scribed by the free ends of the wires, and those lines were vertical for the major part throughout the length of the travel. I had observed the wires and also the markings on the cylinders in each case at the reversal point showed the rotation of the scratcher body with relation to

(Testimony of William A. Doble.)

the simulated casing 18 in the same manner as was conducted in the other tests.

The same results were obtained with Defendants' Exhibits CI and CD-1. In each case the main travel of the scratcher wires down the cylinder were relatively straight lines. The [3568] wires reversed at the end of the stroke, and at each reversal point the body portion or sleeve portion of each of the scratchers rotated with relation to the simulated casing.

I think there is a photograph as one of the exhibits showing the operation of a scratcher similar to Defendants' Exhibit CD-1 that has been marked for evidence—I don't know, I believe it is in evidence—and that photograph of the half-cylinder has an "A" on it to identify that half-cylinder as having been made with an Acme type of scratcher. It is one of the N series, Mr. Lyon.

Mr. L. E. Lyon: Well, I will have to ask the court to let you look at the N series that are in evidence, that he has, and pick it out, because I can't do it.

There is supposed to be a test cylinder in here. Get the other ones, the exhibits that accompanied his rebuttal testimony.

Mr. Clerk, there is another book of exhibits of that kind.

The Witness: I have a photograph.

Q. (By Mr. L. E. Lyon): All right. Where is the photograph, if you have it?

A. Wait a minute. Let me look.

Q. It is not in here.

(Testimony of William A. Doble.)

A. May I step down there, your Honor, and look for it?

The Court: You may.

Q. (By Mr. L. E. Lyon): You have handed to me a [3569] photograph, Mr. Doble, which is of a test cylinder having a large "A" on it, and I will ask you if that is the photograph to which you had reference.

A. Well, this is one of the photographs I had reference to.

Q. Now, what does this show with respect to any test?

A. It is of the half-cylinder of the test made with the 3½-inch Acme type of scratcher as represented by Defendants' Exhibit CI.

Mr. L. E. Lyon: Wait a minute.

I am not sure that I gave you the same half that he has (addressing Mr. Scofield). Pardon me.

The Witness: And I identify this cylinder by the black "A" which appears on the upper right-hand face of the cylinder.

Q. (By Mr. L. E. Lyon): And the photograph I have in my other hand, is that the other half of that same cylinder?

A. No. It is the same half, I believe, Mr. Lyon. No. It is the other half; that is correct.

Q. And that "A" was placed on there by whom, Mr. Doble? A. By me.

Q. You were present when the photograph was taken or when this cylinder was separated from the machine? A. Yes, sir.

(Testimony of William A. Doble.)

Q. And handed to the photographer? [3570]

A. I was present when the cylinders were taken apart and I observed the scribed lines which appear on the photographs which you have handed to me. I do not remember whether I was present when these actual photographs were taken, but I directed the taking of them, that is, I directed that they be taken.

Q. All right. Now, I hand you two other photographs.

Mr. L. E. Lyon: I will have this pair marked as Exhibits GI-1 and GI-2, being the two halves of the complete cylinder and used by Mr. Doble in that test.

The Court: They will be so marked.

(The two photographs referred to were marked Defendants' Exhibits GI-1 and GI-2, respectively, for identification.)

Mr. L. E. Lyon: Now, wait a minute. These are the 5½-inch sizes.

Q. I hand you two other photographs, Mr. Doble. Will you state what they are, upon which there has been erroneously marked "GI-1"?

A. The two photographs which you have handed to me illustrate the two halves of a larger cylinder, that is the cylinder in which the replica of the Acme type of a scratcher of 5½-inch diameter, Defendants' Exhibit CD-1, was operated.

Q. Now, these are the two halves of the same cylinder, are they? [3571] A. Yes, sir.

(Testimony of William A. Doble.)

Q. And the "A" was placed on this larger cylinder by whom? A. By me.

Q. And you observed the tests of which this is a photograph? A. Yes, I did.

Mr. L. E. Lyon: I will ask that these two photographs be marked as Defendants' Exhibits GJ-1 and GJ-2.

You will have to re-mark over that one.

The Court: It is so ordered.

(The photographs referred to were marked Defendants' Exhibits GJ-1 and GJ-2, respectively, for identification.)

Q. (By Mr. L. E. Lyon): State whether or not these tests that you have conducted, as shown by these photographs, Exhibits GJ-1 and GJ-2 and GI-1 and GI-2, showed anything with respect to the rotation of the scratchers tested.

A. Yes, sir, they did.

Q. What did they show?

A. They showed that the scratcher rotated at the reversal point at top and bottom ends of the strokes.

Q. Was that the same or a different result from the tests that you found with respect to the other scratchers?

A. It was the same. They all operated the same, as far as I could see, excepting that some rotated a little [3572] better than the others. They all rotated. It is a matter of degree whether one rotated more or less than the others.

(Testimony of William A. Doble.)

Q. Now, Mr. Doble, I would like to have you take Exhibit No. 1 and the drawings and advise the angle which the scratcher wires make as shown and described in that application with respect to the tangent, and you have a protractor by which you can measure that. [3573]

* * *

Q. (By Mr. L. E. Lyon): Have you measured that angle, Mr. Doble? A. Yes, Mr. Lyon.

Q. What is it?

A. As close as I can measure it, the angle is 60 degrees

Q. And that is 60 degrees on the same side that Exhibit EJ, I believe it was, this model, was 25 degrees from the tangent, is that correct?

A. That is correct.

Q. EL, it was, instead of EJ. Pardon me. Correct the record. A. Yes, sir. That is correct.

Q. All right. Now, is there a disclosure in that application, by drawing or specification, of any other angle, Mr. Doble, than the one that you have just given?

A. There is not in the drawing. That is, the only angle, or an angle very closely related to 60 degrees is the only angle taught in the drawings of Plaintiff's Exhibit No. 1. As I remember from a reading of the specifications on the [3575] file wrapper, there is no mention of any other angle in this particular exhibit, Plaintiff's Exhibit No. 1.

Q. All right. Now, similarly, will you take Ex-

(Testimony of William A. Doble.)

hibit K and tell me in the drawings of the angles, and the specifications, if there is any variation in angle, what the angle shown and described in the Exhibit K for identification is, which was filed November 6, 1945?

A. I have measured the angle on page 15 of Defendants' Exhibit K and find the angle of the extending wires of the bristle to be as close to a true tangent as I could measure on the ends there.

Q. That is to say, on the drawings of Exhibit K, is there any angle other than the tangent as you have measured it? A. No. There is not.

Q. Is there any statement in the specifications of Exhibit K of any angle other than a tangent?

A. Not as I remember the specifications and the prosecution of the patent, Defendants' Exhibit K.

Q. Is it possible, Mr. Doble, looking specifically at Figure 3 of the drawings of Exhibit K, to determine at what angle the wires shown in Figure 3 make with respect to the tangent? A. No, sir.

Q. Why not. [3576]

A. Because there is not sufficient drawing included in Figure 3 to be able to read the angle, and, further, as the view was taken as a sidewise view and not looking down on top of Figure 3, it is impossible to read an angle from that figure.

Q. That is, it is impossible to tell an angle from an elevation or side view as to what it makes in a plan view, is that correct?

A. That is correct.

Q. Now, is there any statement in the specifica-

(Testimony of William A. Doble.)

tions of any kind—and you have read this application—of any angle other than a tangent—and I mean by “this application” Exhibit K?

A. Not that I can remember, Mr. Lyon.

Q. Now, similarly, I will ask that Exhibit 69 be placed in front of you, that is the file wrapper of Application 55,619—that is, I will place a copy of that application before you, of that file wrapper, and I will ask the same question with regard to the disclosure of the angle of that application. Have you measured the angle?

A. I have measured the angles of Figure 3 on page 2 of Plaintiff’s Exhibit 69.

Q. Figure 3? A. Pardon me.

Q. Figure 3, did you say? [3577]

A. Figure 2. And on Figure 5, appearing on page 13 of Plaintiff’s Exhibit 69. And in each case, as closely as I can measure the angle, it appears to be a true tangent.

Q. Now, what does the specification of that application say, does it disclose any angle other than a tangent—and I mean by “that application,” Plaintiff’s Exhibit 69?

A. No, sir. It does not, neither by drawing nor do I remember any other angle mentioned in the specifications.

Q. Does this application teach to you as a mechanical engineer that there is any particular advantage obtained from a tangent or any unusual action obtained from a tangential position of the wires, Mr. Doble?

(Testimony of William A. Doble.)

The Witness: May I have that question read?

(Pending question read.)

Mr. L. E. Lyon: Let it be shown that by "this application" I mean Plaintiff's Exhibit 69.

A. The teaching to me as a mechanical engineer and from my experience in operating the several different types of scratchers is that there is no new or novel action obtained by means of a tangent relation of the wires as to some other angular inclination of the wires. The specifications and the arguments in this particular paper, Plaintiff's Exhibit 69, attribute certain factors to the tangent relationship which I do not believe are found.

Q. What portions of the specifications or arguments [3578] are you referring to, Mr. Doble?

A. I do not remember just where it is, but—

Q. Page 8?

A. Page 8, and I will call attention to line 12, commencing line 12 on page 8 of the specifications, which is a part of Plaintiff's Exhibit 69, which reads:

"When the casing is properly centralized this type scratcher produces complete scratching coverage since their unique mechanical operation during the reversing process causes them to crawl and walk around the hole. The spring mountings of the scratchers, due to rotation of the sleeves, change their position on the wall of the well with each reciprocation. This walking of the wires around the hole and rotation of the collars prevents the abrading ends of the whisk-

(Testimony of William A. Doble.)

ers from tracking up and down in the same place in the hole, thus providing complete coverage of the inner wall surface. The unusual mechanical action of the abrading wires has been determined by mounting a scratcher on a piece of pipe and reciprocating it within a pipe of larger diameter. As the scratcher is being run in a dummy oil well of this sort it has been noted that the whiskers are pointed upwardly in the same direction as the scratcher is lowered into the pipe. As the [3579] direction of the scratcher is reversed, the free ends of the wires hold their position against the inside of the pipe or well bore as they are rotated upon their coil springs as fulcrums. As the wires rotate in arcs passing from a relatively vertical to a horizontal position with reversal of the moment of the pipe, the scratcher sleeve or collar is caused to rotate upon the pipe relieving somewhat the tension on the wires."

Q. Now, what portion of that, Mr. Doble, don't you agree with or do you think is in error?

A. The portion that I think is in error is that that is a novel feature attributed to the makeup of the wires tangent to the body portion of the scratcher. The same action will take place, as I have demonstrated many times, where the scratcher wires have a sidewise inclination which is very much less than a tangent. The fact is, a relatively few degrees in sidewise inclination will cause the scratcher body to rotate around the casing and permit or enable the

(Testimony of William A. Doble.)

free ends of the scratcher wires to fully cover the surface of the well bore which is to be cleaned.

Q. Now, Mr. Doble, I would like to have you again refer to Exhibit K. Let me see Exhibit K for just a minute—and refer to pages 11 and 12 of Exhibit K, which are the claims which were originally filed with this application on November 6, 1945, and will you tell me, from the standpoint [3580] of mechanics, what is meant by this expression, "said whiskers projecting at an angle from the sleeve, simulating the trajectory of bodies thrown from the sleeve were the sleeve rotated rapidly."? That is the last three lines of Claim 1 of the No. 627,013 application as filed.

A. That is a common definition for a true tangent which I think is taught in high school [3581] physics.

Q. That is an exact definition, is it not?

A. Yes, sir; it is.

Q. And does not permit of any real variation if so exact?

A. That is correct. That is the exact definition taught in the schools.

Q. Will you look at these remaining claims of the 627,013 application and tell me if it is not true that all of the remaining claims were made equally dependent upon that definition set forth in claim 1?

A. Yes, sir; they are all dependent claims and they all refer back to claim 1 as the basic claim.

Q. Now, Mr. Doble, claim 2 of that application defines the direction at which the coils of the springs

(Testimony of William A. Doble.)

extend in accordance with the disclosure of that application, does it not? Does it describe whether those coils extend radially or non-radially?

* * *

A. Claim 2 defines the axis of the coils as [3582] being substantially normal to the axes of the respective coil springs.

* * *

A. Excuse me. I had better repeat that answer. The axis of the coil springs is normal to any extended radius which extends through the body portion of the scraper body.

Q. (By Mr. L. E. Lyon): Well, what is that; is that radial or non-radial?

A. That is radial with respect to the body of the scratcher.

Q. And in that respect it corresponds with which one of these models which you had made, Mr. Doble?

A. It corresponds to Defendants' Exhibits CI and CD-1.

Q. Claim 3 of this application defines what, Mr. Doble?

A. Claim 3 defines—I might as well read it; it is very short.

“A scratcher as in claim 1 in which radial studs within the sleeve provide fastening means for the wire whiskers.”

Q. And you have Exhibit A before you?

A. No, sir, I do not.

Q. Will you get it, please, before you, Exhibit A?

(Testimony of William A. Doble.)

I place before you Exhibits A and A-1, and can you point out from these exhibits what is defined there as radial studs? [3583]

A. The radial studs referred to in claim 3 of Defendants' Exhibit K are the same in structure and mode of operation as the radial studs which appear in the illustration in the upper right-hand corner of Defendants' Exhibit A, and likewise in the illustration, Defendants' Exhibit A-1. They are the studs about which the anchored ends of the wires are fastened to retain the whiskers in the scratcher structure.

Q. I hand you Exhibit CI for identification and ask you to point out from that exhibit what the radial studs are.

A. The radial studs are the series of studs which extend inwardly from the scratcher body, about which the scratcher wires or whiskers are coiled and fastened by the head of the radial studs, and the opposite end of the radial stud projects through the body portion of the scratcher and is riveted over to fasten the radial stud securely within the body member. The radial studs project through into the interior of the scratcher body and about which the loops of the coils, that is, the coils of the scratcher wires, are wrapped and firmly held in position on the scratcher body.

Q. Now, Mr. Doble, will you refer to claim 6 of this application, Exhibit K, and tell me what structure that claim defines?

A. Claim 4 reads:

"A scratcher as in claim 1 in which a circumferential row of studs within the sleeve [3584] posi-

(Testimony of William A. Doble.)

tioned intermediate parallel rows of holes through which the whiskers project provide fastening means for the wire whiskers."

The claim has been corrected in some respects. It is difficult to read those corrections here as they do not appear.

Q. I just wanted it as originally filed, without the corrections, Mr. Doble.

A. I read it as originally filed.

Q. Oh, I see. Now referring to Exhibits A and A-1 can you tell me what that defines as shown by these exhibits? A. Yes, sir.

Q. What does it define?

A. It defines a row or a circumferential row of studs within the sleeve, that is, the scratcher body. We have the row of studs inside, positioned intermediate parallel rows of holes. The studs, as I have pointed out, within the scratcher body are positioned between two series of holes which are pierced through the scratcher body adjacent the upper and lower faces of the scratcher body.

Q. Does that definition read precisely upon the structure as illustrated in Exhibits A and A-1?

A. Yes, sir; it does. It is identical. You have the row of circumferential studs positioned between the two rows of holes which are pierced through the body portion of the scratcher. [3585]

Q. Now, claim 5, what does it add to that definition, if anything, Mr. Doble?

A. Claim 5 reads:

"A scratcher as in claim 1 in which a circumfer-

(Testimony of William A. Doble.)

ential row of studs within the sleeve positioned intermediate parallel rows of holes provide fastening means for the wire whiskers, a single whisker passing through adjacent holes in each row and a pair of whiskers attached to each stud."

That adds to the previous claim that each stud is employed to fasten the end of two of the whisker wires, that is, under the head of each of those studs there is wrapped the fastened end of each of the wire whiskers, and the wire whiskers in turn project outwardly and then through the appropriate openings in the bore provided in the scratcher body.

Q. And is that definition true of Exhibits A and A-1, Mr. Doble?

A. Yes, sir; in exactly the same way we find the series of studs, the series of holes above and below the studs. In each case each stud is employed to fasten two of the scratcher wires or whiskers to the body portion of the scratcher body. As shown in Defendants' Exhibits A and A-1 each stud fastens two of the whiskers to the body portion.

Q. In the respects pointed out, Mr. Doble, is there [3586] anything disclosed in this or defined by the claims of the 627,013 application which was filed in the Patent Office on November 6, 1945, that was not found in the advertisement in Exhibit A?

A. No, there is nothing found in Exhibit K which is not likewise found in the same manner and operating in the same way in Defendants' Exhibits A and A-1.

(Testimony of William A. Doble.)

Q. There was matter added to the application serial No. 627,013, Exhibit K, which was not found in the Exhibit 1, 388,891 application. What was that added matter, Mr. Doble?

* * *

Q. (By Mr. L. E. Lyon): Point out to the court what the added matter was so it will be evident.

A. Did you refer to Exhibit 1, Mr. Lyon, the application 388,891?

Q. Yes, I did, Mr. Doble.

A. Well, there is added matter to Plaintiff's Exhibit 1, [3587] which is, namely, the positioning of the wires, that is, the free ends or the extended ends of the wires, at an angle different from the tangent. They extend outwardly, you might say, radially.

Q. I think you got it the wrong way. I said what was added to 388,891 by 627,013. You are going backwards.

A. Yes. The tangential relation of the wires, and also the inside stud mounting which we have referred to as the row of studs or rivets extending around the inside of the scratcher body to which the ends of two of the scratcher wires are fastened so as to permanently mount the scratcher wires to the scratcher body.

Q. As I understand your testimony as to that matter, it was all common to the advertisement of July 7, 1941, Exhibit A, is that correct?

A. Yes, sir; that is correct.

(Testimony of William A. Doble.)

Q. Now if you will return to Figures 4, 5, and 6 of the 627,013 application?

Mr. Scofield: Exhibit K?

Mr. L. E. Lyon: Exhibit K.

You will find, will you not, a different form of coiled spring?

A. Yes, sir. That is on page 15 of the drawings there is a different type of coil.

Q. What type of coil is that? [3588]

A. That is the type of coil referred to here as a conical coil.

Q. How is that conical coil illustrated by, or is it illustrated by Exhibit EK, Mr. Doble?

A. Yes, sir.

Q. How many turns is there on the conical coil as shown in the drawings, Figures 4, 5, and 6?

A. There appear to be four in Figure 6; I guess it may be also four in Figure 4; but in Figure 5 you cannot determine how many coils there are.

Q. How many are there in this physical model that was presented to you?

A. In Exhibit EK there are four coils.

Q. I place before you Exhibit CV-1 and ask you, within the definition of a conical coil, if that structure shows a wire with a conical coil in it, Mr. Doble? A. Yes, sir; it does.

Q. How many turns are there in that conical coil?

A. There appear to be two, probably two and one-half.

The Court: What is the last exhibit?

(Testimony of William A. Doble.)

The Witness: CV-1, your Honor; that is "V" like in "value." [3589]

* * *

Q. (By Mr. L. E. Lyon): Mr. Doble, I place before you Exhibit EF and ask you what kind of spring coils there are in that exhibit.

A. The spring coils in Defendants' Exhibit EF are conical coils.

Q. At approximately what angle do the wire fingers or abrading wires extend from the collar or from a position adjacent the collar, Mr. Doble?

A. Approximately tangent.

Q. How does that model, Exhibit EF, correspond with the disclosure of Figure 5 of the 627,013 application?

A. In the respects we have mentioned, they are substantially the same, that is, Figure 5 discloses conical coils, Figures 5 and 6 taken together, and the free ends of the wires are substantially tangent to the collar or body portion of the scratcher.

Q. Now, Mr. Doble, I will ask you to refer to Exhibit 69, that is the file wrapper of the 55,619 application, and particularly to the pages on the bottom of the photostats which are numbered apparently in pencil 76 and 77— A. Yes, sir.

Q. —and I want you to read the definition made by Claim 23 as it appears on page 76, and compare that definition with the structure, Exhibit I, as the same as shown in Jones and Berdine—I mean Figure 26 of Exhibit X, as that [3590] structure is

(Testimony of William A. Doble.)

illustrated by Exhibit IIII, which I place before you.

A. Which claim did you refer to, Mr. Lyon?

Q. 23.

* * *

A. Reading Claim 23, which appears on page 76 of Plaintiff's Exhibit 69:

"In combination with a well casing, a support rotatably mounted on the exterior of said casing, stiff wire whiskers each flexibly attached at [3591] one end to said support and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker, and all in substantially the same angular relation with the support."

I find in Defendants' Exhibits IIII and CF the first part of the—that is the title, really, or the environment of the invention, "in combination with a well casing." Exhibit CF is a replica of a well casing.

The next phase of the claim or element of the claim calls for "a support rotatably mounted on the exterior of said casing." The support in this case—and in this case I am referring to Defendants' Exhibit IIII—is the body portion of the scratcher element.

Q. (By Mr. L. E. Lyon: That is what we have referred to as the collar of the scratcher?

A. As the collar or sleeve of the scratcher, and

(Testimony of William A. Doble.)

that collar or sleeve of the scratcher is rotatably mounted on the well casing.

Q. Proceed.

A. The next element specifies, "stiff wire whiskers each flexibly attached at one end to said support." The stiff wire whiskers I am pointing to and are designated H-1 and H-2 on Defendants' Exhibit IIII, that is, at least two [3592] of the wires are so indicated.

There are a plurality of 30 wires in this particular embodiment of the scratcher as shown in the Jones and Berdine report, that is Figure 26 of that report which is Defendants' Exhibit X.

Q. Proceed.

A. "* * * and each"—that is now referring to these wire whiskers—"each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support"—as we can see by viewing the wires of Defendants' Exhibit IIII, the effective angle of inclination is sidewise with relation to a true radius to the center of the scratcher body.

Q. Proceed.

A. "* * * with respect to the radius of the support drawn to said projection point of the particular whisker, and all in substantially the same angular relation with the support."

As we note by viewing Defendants' Exhibit III, all of the wire whiskers are, substantially all have substantially the same angular relation to the body portion of the scratcher.

(Testimony of William A. Doble.)

Q. Now, Mr. Doble, this application, Exhibit K, gives you a determination of when a scratcher rotates, is that correct? [3593]

A. I don't believe I understand your question.

Q. Well, the application, Exhibit 69, in the specification tells you how to determine that a scratcher is rotated, does it not? A. Yes, sir.

Q. Do you precisely follow that method in determining when a scratcher like Exhibit IIII is rotated?

A. Yes, sir, with the additional precaution, so that the human element would be eliminated, from any attempt to rotate the scratcher.

Q. That is, you use a square shaft?

A. Yes.

Q. To be absolutely certain that nothing could happen to influence the rotation, is that it?

A. Yes, sir.

Q. And that is the only reason you used a square shaft? A. Yes, sir.

Q. Now, will you take Claim 24 of this application Exhibit 69, as it appears on page 76 of Exhibit 69, and read that and make the same comparison?

A. Reading Claim 24 as follows:

"In well cleaning equipment, a casing reciprocable in the bore of a well, a support rotatably mounted on the exterior of said casing, stiff [3594] wire whiskers each flexibly attached at one end to said support, and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the

(Testimony of William A. Doble.)

radius of the support drawn to said projection point of the particular whisker and all in substantially the same angular relation with the support, the free ends of said whiskers being of a length to frictionally contact the well wall and abrade its surface upon reciprocation of the casing, said whiskers upwardly inclined on the downstroke and downwardly inclined on the upstroke of the casing and upon reversal of the casing travel adapted to fulcrum both at their points of contact with the well wall, and substantially at their points of attachment with the support whereby vertical movement of the casing after each reversal rotates the support on the casing, thereby relieving bending stress on the whiskers and shifting the whiskers circumferentially upon the well bore to contact and abrade a different area upon each casing reciprocation."

Applying the claim to Defendants' Exhibits IIII and CF, we find we have here, and I am holding in my hand, a simulated well cleaning equipment, the well cleaning equipment is represented by the scratcher, Defendants' Exhibit IIII; [3595] "a casing reciprocable in the bore of a well"; I am holding in my hand the casing, a simulation of a casing which could be or would be reciprocable in the bore of a well, and that designated as Defendants' Exhibit CF.

"A support rotatably mounted on the exterior of said casing." The support is the body portion, the sleeve, the collar, or whatever we choose to call it, of the scratcher element, and, as I am demonstrat-

(Testimony of William A. Doble.)

ing, I can freely rotate the scratcher collar or support or sleeve on the simulated well casing, Defendants' Exhibit CF.

"Stiff wire whiskers each flexibly attached at one end to said support." We will observe that there are a number of stiff wire whiskers, 30 of them, in fact, each flexibly attached by means of the torsion spring which was explained by Mr. Wright in his testimony, each of the wire fingers is flexibly attached to the wire support, at one end attached to the—"attached at one end to said support," and the one end of the stiff wire whisker is attached to the support by the outturned end which passes through one of the clips on the body portion.

It further defines that each of these stiff wire whiskers is to have an angular inclination, having sidewise direction with respect to the radius of the support. As I have already testified before, if we assume a line which passes through the center of the tubing, it is clear to [3596] observe that each of the stiff wire whiskers has a sidewise inclination with relation to the body portion of the scratcher collar, or the support as it is defined in the claim.

And all of the whiskers are inclined in the same direction with relation to the supporting body.

Q. I suggest that you take a piece of paper, Mr. Doble, and lay it down on where you are reading, so you do not lose your place.

A. The next, "the free ends of said whiskers being of a length to frictionally contact the well wall

(Testimony of William A. Doble.)

and abrade its surface upon reciprocation of the casing." We have pointed out at various times in the testimony so far, and the cylinders I have prepared demonstrate, the manner in which the stiff wire whiskers engage the surface of the well bore and during that engagement remove the mud from the well bore.

"Said whiskers upwardly inclined on the down-stroke"—when the casing is being run into the well, because the lengths of the wires extend out beyond the diameter of the well bore, and they are pushed upwardly as I am doing with my finger on one of the whiskers, I am pushing it upwardly.

Q. Upwardly on what?

A. Upwardly on one of the stiff wire fingers.

Q. Of what exhibit? [3597]

A. Of Exhibit IIII, until the end of the wire will ride on the inner surface of the well bore and be of substantially the same diameter as it passes down the surface of the well. Of course I have demonstrated one, but the same thing would result with all of the stiff wire fingers, they would all bend upwardly during the downstroke of the casing as it is run into the well.

Then it defines that the wire whiskers will be inclined downwardly as the casing is reciprocated upwardly during a cleaning operation, so as to bring the free ends of the wires into register with the bore diameter so as to clean the surface.

"And upon reversal of the casing travel adapted to fulcrum both at their points of contact with the

(Testimony of William A. Doble.)

well wall and substantially at their points of attachment with the support whereby vertical movement of the casing after each reversal rotates the support on the casing, * * * if we assume that the scratcher is being run into the well along with the lowering of the casing or running of the casing into the well—

Q. We do not have to assume that. That is what is done, isn't it?

A. That is what is done, and we reach the bottom of the stroke. The casing is then moved upwardly to reciprocate the scratchers. The first upward moving of that casing does [3598] not cause a corresponding movement of the scratcher. The wires are in firm engagement during that period with the wall of the well bore and lock the support or scratcher against the vertical movement until the lower stop collar, which is on Defendants' Exhibit CF, engages the bottom-edge surface of the support of this scratcher and causes upward movement of the scratcher in the well, at which time the wires which are inclined upwardly will be forced into greater contact with the well bore and as a result will pivot or fulcrum about the point as the scratcher is being moved upwardly.

As we will remember, on the downward stroke or on the upward stroke, the bristles, all the wires had to be moved upwardly or downwardly to bring them in register with the well-bore diameter. So that if they are allowed to stand out straight as they are in Defendants' Exhibit IIII, the wires

(Testimony of William A. Doble.)

would be longer than the diameter of the well bore, that is, the diameter across the wires would be greater than the diameter of the well bore, and the wires would have to be bent inwardly, or the ends of the wires would have to pierce the wall of the well bore.

In passing through that reversal, the wires, instead of piercing the well bore, caused rotation of the scratcher to accommodate the difference in the length. [3599] And then after—that is, that swinging or pivoting of the wire will take place from its upper position during the downstroke until it reaches its neutral position, which will be horizontal as I am now holding Defendants' Exhibit IIII. Thereafter the finger is freed and will find a new path or hunt to a new path and travel up a new path during its reciprocation in the well bore. In that way, on each reciprocation the fingers hunt, the collar or support is rotated, the fingers hunt a new location and scratch a new area of well bore surface. And that is what is meant by that portion of the claim which I have just read.

And reading further:

"Thereby relieving bending stress on the whiskers and projecting the whiskers circumferentially upon the well bore to contact and abrade a different area upon each casing reciprocation."

In the manner as I have pointed out.

Q. Mr. Doble, will you take claim 31 now and make the same comparison?

(Testimony of William A. Doble.)

A. Reading from claim 31, which appears on page 77 of Plaintiff's Exhibit 69, I will read claim 31 as follows:

"A well bore cleaning scratcher adapted to be rotatably mounted on a well casing comprising an annular support, stiff wire whiskers, each flexibly attached at one end to said support and each [3600] projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius drawn to said projection point of the particular whisker and all of said whiskers projecting in substantially the same angular relation from said support."

That is the end of the claim and now I will apply claim 31 to defendants' Exhibits IIII and CF. "A well bore clearing scratcher adapted to be rotatably mounted on a well casing comprising"—

I have pointed out before the well bore cleaning scratcher as including Defendants' Exhibit CF. And, as I pointed out before, the scratcher is adaptable to be and is rotatably mounted upon the well casing. The well casing is Defendants' Exhibit CF. And, as I swing the scratcher around it is freely rotatably mounted on the well bore casing.

The cleaning scrtacher is to comprise an annular support. The annular support is the body portion of the scratcher element.

"Stiff wire whiskers"—as I pointed out before, there are 30 stiff wire whiskers mounted on the support. Each wire whisker is flexibly attached at

(Testimony of William A. Doble.)

one end to said support. As I pointed out before, each of the wire whiskers is flexibly attached to the support.

"And each," that is referring to "each wire whisker [3601] projecting from a point on the periphery of the support at an angular inclination having sidewise direction."

As I pointed out before, each of the wires extends from a point on the body portion or support for the scratcher and has a sidewise inclination. That sidewise inclination is with respect to the radius drawn to said projection point of the particular whisker.

"And all of said whiskers projecting in substantially the same angular relation from said support."

As I pointed out before, all of the wire whiskers have the same bend and extend from the support in the same direction. [3602]

* * *

Q. (By Mr. L. E. Lyon): Mr. Doble, is it possible to see whether or not a scratcher rotates on a casing during the operation of placing cement in a well bore cementing operation? A. No, sir.

Q. Is it common in the mechanical arts to simulate an operation to determine what is happening under such conditions when they cannot be observed optically?

A. Yes, sir; it is. That is common practice.

Q. Is the test just suggested in the Hall application Serial No. 55,619, Exhibit 69, and in the Hall

(Testimony of William A. Doble.)

application, Exhibit K, Serial No. 627,013, a fair test to determine such an operation of rotation when it is not observable optically?

A. Yes, I would say so. That would be a rough test. [3603] A better test would be those which we made, which eliminate the human element which might influence rotation. Basically, they are the same.

Q. Mr. Doble, you have made a comparison of claims 23, 24, and 31 with the structure of figure 26 of the Jones and Berdine report. I would ask you to state whether or not the comparison which you made with the Jones and Berdine Figure 26 structure applies equally to the structure of the wall-cleaning guide of Exhibit 104?

A. Yes, sir; it does.

Q. Mr. Doble, the claims 23, 24, and 31 each call for sidewise direction. Is it possible from those claims, any one of them, to determine what the degree of sidewise direction is that is specified in those claims?

A. No, sir. There is no definition of the amount nor extent of sidewise inclination.

Q. If we refer to specification of the 55,619 application, Exhibit No. 69, is there any definition of "sidewise inclination" given in that application other than "a true tangent"?

A. You are referring to Plaintiff's Exhibit 69, Mr. Lyon?

Q. 69. My question is this: If we take "side-

(Testimony of William A. Doble.)

wise direction" as used in Plaintiff's Claims 23, 24, and 31 and seek to determine what that sidewise direction is from the [3604] specification in that application in which they appear, is there any definition or key given other than tangential?

A. No, sir; that is the only teaching in the patent as to the angular relation of the wires with respect to the body portion of the scratcher.

Q. Now, Mr. Doble, would sidewise inclination (or sidewise direction) include, as it is used in claims 23, 24, and 31, any angular inclination of the entire 90 degrees between a true tangent and a true radial extent of the wires?

Mr. Scofield: Would you read that question, please?

(First portion of question read by the reporter.)

Mr. L. E. Lyon: And include "or sidewise direction." Put them both in.

(Question read by the reporter as amended.)

A. Yes, sir; that is correct.

* * *

Q. (By Mr. L. E. Lyon): Mr. Doble, as a mechanical engineer and viewing the Jones and Berdine report as a [3605] publication, is it or is it not obvious as to how the scratchers of Figure 26 were mounted upon the pipe or casing?

A. It is obvious to me that the scratchers are

(Testimony of William A. Doble.)
mounted on the casing between two stop lugs and
is free to reciprocate between those stop lugs.

Q. And being free to reciprocate between those
stop lugs, is it also obvious as to any other operation
that takes place?

A. Yes, it will be free to rotate. There is no
teaching in the Jones and Berdine report that the
scratcher body is prevented from rotation; and
being free to reciprocate, it would be free to rotate
unless special provision was made to prevent rota-
tion, which the Jones report does not teach.

Q. Mr. Doble, you are familiar with mechanical
operations; in fact, have operated and have now a
machine shop of your own, have you not?

A. Yes, sir.

Q. Is it correct to say that one of the most diffi-
cult of machine operations is to prevent a rotation
between a structure like that shown in figure 26 of
the Jones and Berdine publication?

A. You mean while it is being operated in a
well?

Q. Yes.

A. I think if you tried to keep it from rotating
you [3606] might have difficulty unless you provided
a special means that would rotate.

Q. Is it or is it not obvious to you that if it
was held so that it did not rotate, that such means
would have to be and would be specifically defined by
the author?

A. Yes, that is what I would expect.

(Testimony of William A. Doble.)

Q. Isn't that true of most mechanical publications that you have read?

A. Yes, that would be one of the controlling features in its operation.

The Court: In your opinion—

The Witness: In my opinion, yes.

The Court: —would it state the operation to be held rigid?

The Witness: Yes, your Honor, and perform the operation just as well. Now, I would say, for example, let us take Defendants' Exhibit IIII mounted on Defendants' Exhibit FFFF. If we should weld the support or body portion of the scratchers to the simulated casing and lowered the casing or ran the casing into the well to the area you wished to clean, and then reciprocated the casing up and down through the area to be cleaned, the wires would on each stroke remove mud cake. It would be advantageous to rotate the entire casing a little bit for each rotation so that the fingers would hunt out a new path and scribe the scratch of [3607] fresh mud off of the surface of the wall.

The Court: As I understand it, in your opinion, unless the scratcher is rigidly mounted on the casing it will rotate?

The Witness: Yes, your Honor.

The Court: There are only two ways, then, to control the rotation; and one is to make it rigid and the other is to provide means to permit a certain mode of operation?

The Witness: Yes, that is true, your Honor. In

(Testimony of William A. Doble.)

the plaintiff's construction in their advertising they say in certain cases to weld the scratcher to the casing, and in that case, actually, you would rotate as well as reciprocate. And there are on the market today, as we have the exhibits here of the purely rotating type of scratchers. They are mounted on the casing. They do not rely on reciprocation. They are welded to the side of the casing, strips are welded to the side of the casing which have the spring fingers mounted on them. There may be three of them around the circle of the casing, and that casing is rotated. And the advantage claimed by that is that once they lowered the casing to the position, when they want to cement it, then they do not have to move the casing from that said position. Merely by rotating them they can clean the surface of the well bore, preparing that surface there for cementing or for production.

The Court: The springs will force the scratcher up and [3608] down.

The Witness: No. The springs, they do not move up and down. They just go down a circular path, but there are a sufficient number of them and they are mounted in staggered relation about the periphery of the casing so the free ends of the wires cover the entire surface of the well bore.

The Court: Probably cover the surface?

The Witness: Yes, your Honor.

The Court: There are probably several ways of doing that?

The Witness: Yes, your Honor.

(Testimony of William A. Doble.)

Q. (By Mr. L. E. Lyon): That is, the scratchers you have reference to, Mr. Doble, are exemplified by BU, which is the B & W rotating scratcher, and the Exhibit DT, which is the Halliburton Oil Well Cementing Rotation Scratcher, is it not?

A. Yes, sir; that is correct, and which has the fingers mounted so the ends will sort of hunt around the surface, to continue to scratch that surface and clean the well bore.

Q. Mr. Doble, there has been some statement here with reference to the coiling of the wires in a scratcher of this type of Exhibit CV-I (1), and I will hand you a scratcher wire from that.

The Court: CV-1.

Mr. L. E. Lyon: -1, which is Exhibit CV-2, and if [3609] those wires of such a scratcher element are to come out from the collar to the same diameter or the same radius, is it possible for the structure to be made, as those wires are mounted in the collar, with the wire lengths precisely the same from the collar to the outer end?

A. No, sir.

Q. Why?

A. Because there are several factors. First of all, we want the over-all diameter of the scratcher to be of a certain diameter. Now, if one of the scratcher wires projects from the surface of the scratcher body at a slightly different angle—and practically all of the scratcher wires are at a slightly different angle than the others due to the manufacture—there is no reason for them to be precise

(Testimony of William A. Doble.)

instruments of manufacture—therefore, for every change in angle there will be a different length of wire because that length of wire, as you can see, extends up now above the wire adjoining it. In order to make the circle that would include all of the wires, the wire that I am now bending would have to be cut off and as soon as you cut that wire off, then the length of the wire projecting from the surface of the body would naturally be shorter.

And then there is another factor. The coils are made so that on the machine they are rough manufacture. Some of the coils extend through the holes or openings in the collar [3610] sleeve to a greater or less extent. In some of those scratchers that is very pronounced. Here, for example, is one where the coil of the scratcher is considerably below the surface, and shortly from that there is—well, take here, for example, the top of the coil is practically flush with the surface of the collar. Those two wires' lengths would have to be different in order that the over-all outer diameter would be the same. And that, I think, you will find in comparing these wires, that none of these wires are the same length.

Take, for example, the two I am now pointing to. If the wires are the same length, then one wire is going to engage in the wall and the other is going to miss it. So in order for the wire that is closest to your Honor to engage the wall it would have to be made longer than the wire which I now have engaged with my finger.

(Testimony of William A. Doble.)

So it is not material. I don't think it makes any difference whatsoever as to the length of the wires, provided that the over-all diameter is the diameter that you want and that is the one that is obtained, that may be obtained by making one wire longer than the other. But by doing so, you attain the projection having these wires of a length that will properly engage the surface of the well bore.

Q. Mr. Doble, these holes in Exhibit CV-1, there are two rows, an upper and lower row the way I am holding it. [3611] Those rows are in what is called staggered relation, are they not?

A. Yes, sir; that is correct.

Q. And that staggered relation requires in order for one scratcher wire with two fingers on it, that the scratcher wire be placed in an inclined relation inside of the collar, does it not?

A. Yes, sir; that is correct.

Q. If the wires, therefore, come out to the same extent in the same direction on the outside of the scratcher, one wire must make with the connecting portion of that wire structure an obtuse angle while the other makes an acute angle, does it not?

A. Yes, sir. That is clear on Defendants' Exhibit CV-2. The wires are of somewhat different length; or, if they are the same length, the ends would not extend out the same distance from the sleeve as is desired to have both of the ends of the wire engage the wall surface.

The Court: It is the same problem mechanically

(Testimony of William A. Doble.)

that the manufacturer of a broom or a brush would encounter, isn't it?

The Witness: Yes, sir. Yes, your Honor.

Q. (By Mr. L. E. Lyon): Now, Mr. Doble, will you describe to the court the disclosure, giving us a thumbnail sketch of the disclosure, of the '317 patent, Exhibit 38, [3612] that is the Wright patent, Exhibit 38, the apparatus patent, and describe how, if it does, that patent finds its counterpart in the different exhibits which have been referred to.

Mr. Scofield: Now, your Honor, I don't believe there is a necessity for another thumbnail sketch of the '317 patent.

Mr. L. E. Lyon: We have not had one yet. We have had it of the method patent.

The Court: What would be the purpose of that?

Mr. L. E. Lyon: The purpose, your Honor, is to set before the court how that patent finds its counterpart in the structures of the plaintiff and the defendant in this action. And that was the question which I asked.

Mr. Scofield: We will stipulate that it covers the 104 wall-cleaning guides, if that is any help to you.

Mr. L. E. Lyon: I will accept that stipulation. That will shorten it. We can proceed from there to eliminate the 104 patent structure. [3613]

* * *

Q. (By Mr. L. E. Lyon): Mr. Doble, will you take the Wright patent, Exhibit 38, and compare

(Testimony of William A. Doble.)

that disclosure with the structures of the Jones and Berdine scratchers, the Weatherford scratcher as shown for example by Exhibit EJ, I believe that is the one on the end here, or No. 40, and I think the witness has the other one on the stand there. That is the one I want, Exhibit CV-1, the Multiflex scratcher of Exhibit 57—and I will put Exhibit 57 in front of you—and the Nu-Coil scratcher Exhibit 72? [3616]

* * *

Q. (By Mr. L. E. Lyon): Mr. Doble, you have placed before you certain exhibits which are illustrative of the different forms of scratchers. Will you just state for the record what those exhibits are?

A. Yes, sir. The first exhibit is the scratcher, in physical form, identified as Defendants' Exhibit IIII, which is mounted upon the simulated portion of a well casing, Defendants' Exhibit CF.

The next exhibit comprises a scratcher identified as Defendants' Exhibit EC, which is mounted upon a section of well casing identified as Defendants' Exhibit ED.

The next exhibit is Defendants' Exhibit No. CK. And the next exhibit is Defendants' Exhibit EJ. And the next exhibit is Plaintiff's Exhibit 72. And the last exhibit is Plaintiff's Exhibit 57.

Q. All right. Now, you also have before you Exhibit 8? A. Yes, sir.

Q. The question that was left before you: Will you take and make a comparison of the disclosure

(Testimony of William A. Doble.)

of Exhibit 8 [3625] with these different scratcher exhibits which you have just identified, taking them in turn, Mr. Doble?

A. I have before me the exhibits which I have enumerated, which represent five different types or styles of wall-cleaning guides or scratchers. The scratchers which I have before me do not serve a useful purpose until they are mounted upon a well casing and run into the well and operated.

As, for example, in Defendants' Exhibits IIII and CF, we have one of the scratchers mounted upon a simulated portion of well casing. The same is true with Exhibit CE, which is mounted upon a simulated wall (well) casing ED. All of the scratchers which I have before me would be similarly mounted on a wall (well) casing; that is, they not only will be mounted on the casing but they will be permanently mounted on the wall casing—on the well casing, and they are to be permanently installed in the well bore at the completion of the cementing or conditioning of the well.

So that we have before us, as I pointed out, the same type of instrumentality which is used for the purpose of removing mud cake from the particular zone in the well which is to be conditioned for either cementing or production.

Each is to be mounted upon a tubular casing which is lowered into the well and operated in the selected zone to clean the well bore. [3626]

Now, each of the scratchers which I have before me and have identified by Exhibit number is

(Testimony of William A. Doble.)

mounted on the casing or secured to the casing in a particular manner. As, for example, in the combined Exhibit Defendants' Exhibits IIII and CF, the scratcher or sleeve of the scratcher is securely fastened upon the casing between two spaced stop rings in such manner that the sleeve of the scratcher may freely reciprocate and rotate with relation to its securing means which securely fasten it to the casing.

The same is true with Defendants' Exhibit combination including Defendants' Exhibits EC and ED.

In like manner Defendants' Exhibit CK, which has been referred to as a wall-cleaning guide, is securely fastened to the casing between either stop rings, as illustrated in Defendants' Exhibit CF, or stop lugs as they appear in Defendants' Exhibit ED. Either way of mounting the scratcher on the casing or tubular casing string is a matter of election or option by the operator or driller who is to progress the string of drill pipe into the well bore.

In the same manner Defendants' Exhibit EJ may be mounted between stop rings or stop lugs, or may be welded to the casing as called for in the Weatherford advertising literature. Defendants' Exhibit EJ is a Weatherford-type of [3627] scratcher.

Defendants' Exhibit or Plaintiff's Exhibit C-2, which is a Nu-Coil type of scratcher made by the B and W company, would normally be mounted or secured to the casing between stop lugs or stop rings as may be selected by the driller.

The same is true of Plaintiff's Exhibit No. 57

(Testimony of William A. Doble.)

which is the Multiflex-form of scratcher made by the B and W company.

So that we find all of the scratchers which I have before me arranged, and are securely mounted, on the casing before it is run into the well bore.

Having the scratchers mounted on the casing, the casing is then run into the bore and is reciprocated in the area to be cleaned.

Now, the patent '317 deals with the particular—

Q. Exhibit 38.

A. Exhibit 38 deals with the particular form of scratcher construction. The scratcher is to have a plurality of scratching or abrading fingers.

I will point out in Defendants' Exhibit IIII the series of plurality of abrading fingers, which are of stiff spring steel and are equally spaced around the periphery of the sleeve which forms the body portion of the scratcher.

In Defendants' Exhibit EC, we find the same scratching elements or fingers, and I will call attention to one portion of the sleeve part of Defendants' Exhibit EC from which the guide bars or clips have been removed, so that the spring [3628] fingers with their attaching shanks can be observed more clearly in the manner that each of the shanks of the spring fingers is mounted upon the sleeve of the scratcher body.

In the same way, Defendants' Exhibit CK is provided with a plurality of spring wire abrading fingers which are equally spaced around the periphery of the sleeve of the scratcher and are ar-

(Testimony of William A. Doble.)

ranged, that is, the free ends of the wires are arranged to engage the wall surface of the well bore that is to be cleaned.

The Court: Does the record show whose device that is?

The Witness: Yes, your Honor. That is the device made by the B and W company. It is Exhibit CK, wall-cleaning guide made by the B and W company.

Defendants' Exhibit EJ is a Weatherford scratcher and it includes a plurality of spring steel wire abrading or scratching fingers or elements, the free ends of which are so related to the structure as to engage and abrade the surface of the wall to be cleaned.

The same is true with Plaintiff's Exhibit 72, wherein it may be observed a plurality of spring steel abrading fingers or scratching fingers which are of such length as to enable the free ends of the scratcher fingers or wires to scratch the wall surface of the well bore where the mud cake is to be removed from the well bore.

The same is true with Plaintiff's Exhibit 57, which is [3629] defendants' wall-cleaning guide, and the wall-cleaning guide includes a plurality of spring steel wire abrading fingers for scratching the surface of the well bore during the cleaning operation, and the lengths of the fingers are so related to the structure as to engage the side walls of the well bore in the area to be cleaned.

Another important feature, as defined in Plain-

(Testimony of William A. Doble.)

tiff's Exhibit 38, the patent to Wright, '317, is the manner in which the spring fingers are mounted upon the sleeve of the scratcher body.

Referring again, first, to Defendants' Exhibit IIII, which is a replica of the Figure 26 of the Jones and Berdine report, Defendants' Exhibit X, we will observe that each of the fingers, that is, the spring steel abrading fingers, is mounted on the sleeve forming the body portion of the scratcher in such a manner that the fingers may swing longitudinally with relation to the sleeve portion of the scratcher body.

The particular mounting is more clearly observed in Defendants' Exhibit EC, which likewise is a replica of the Figure 26 of the Jones and Berdine report, Defendants' Exhibit X.

The spring fingers or abrading fingers are yieldably mounted on the sleeve portion of the scratcher body, by having one end of each of the spring fingers projecting [3630] outwardly in a radial direction to pass through a properly-sized opening in one of the guide bars or clips which confine all of the fingers to the body portion of the scratcher.

From the point of attachment to the clip or guide bar, the scratcher finger is provided with a relatively long arcuate section which follows around the periphery of the sleeve portion and finally extends at a sidewise inclination from the sleeve around a radius and then the scratcher finger extends more or less radially a portion of its length,

(Testimony of William A. Doble.)

and then finally is given a sidewise inclination of about 30 degrees.

Q. (By Mr. L. E. Lyon): Well, Mr. Doble, that manner of securing what you call the arcuate section of the scratcher finger on the outside periphery of the body, that performs two functions, does it not? A. Yes, sir.

Q. And what are those two functions?

A. The first function, the most important, I would say, is that it provides a torsion spring section or a spring section or a yieldably mounted section in the finger structure, so that, during the reversal of the scratcher within the well bore, the fingers may freely yield without distorting the finger structure.

Q. Now, Mr. Doble, in this Exhibit EJ we have previously discussed this inside stud [3631] mounting.

A. Yes, sir, we have.

Q. Now, the spring fingers in this structure have a section which extends on the inside of the sleeve, passes around that stud, and has an eye, and that eye holds that spring, does it not, or does it, in a manner similar to the upturned end of the spring wire which passes through the hole in one of the clips on Exhibit IIII?

A. No, sir. On Exhibit EC.

Q. Is that true?

A. Yes, sir, that is true.

Q. And that eye on the inside of this collar follows the inner periphery of that collar, does it not?

A. Yes, sir, it does, to a certain degree. The eye

(Testimony of William A. Doble.)

you are referring to is the eye by which that particular abrading finger is securely mounted to the inside surface of the sleeve.

Q. Well, that is what we have called the inside stud.

A. And that is called the inside stud or inside mounting, as it is commonly referred to in this art.

Q. Now, is it true or is it not true that, with that type of securing on the stud, the entire spring finger is free to spring and yield to a torsional force, and provides a torsional spring from the point of stud mounting to the end of the wire?

A. Yes, sir, that is true. [3632]

Q. And I am there talking about the plaintiff's structure of the Weatherford scratcher as illustrated by Exhibit EJ.

A. I might add to that also, Mr. Lyon, that in defendants' structure, as shown in Defendants' Exhibit EJ, the wire—

* * *

A. (Continuing): —the wire finger is yieldably mounted by providing the loop under the inside mounting, the extent of the wire extending from the mounting through the hole and then outwardly to its end, and interposed between that length there is a spiral spring which, in the operation of permitting the abrading finger to flex longitudinally, as the patent calls it, up or down longitudinally with relation to the well bore, acts as a torsion spring as well as also does the length of the wire spring which projects outwardly from the periphery of the collar,

(Testimony of William A. Doble.)

as well as the distance from the holding stud or rivet inside to the entrance end of the spiral coil, in other words, the entire structure acts as a torsion spring. [3633]

* * *

The Witness: EJ, your Honor.

So that we find in this structure an abrading finger which is made of spring steel which is yieldably mounted or flexibly mounted to the sleeve portion of the scratcher and enables the wires or abrading fingers to flex or to move longitudinally with relation to the well bore without distorting or deforming the respective fingers of the scratcher.

Q. (By Mr. L. E. Lyon): Now, Mr. Doble, do these scratchers have the fingers, these spring fingers yieldably secured to the collar to permit the fingers to swing longitudinally of the collar?

A. Yes, that was just the point I was endeavoring to explain, that longitudinal movement which is permitted by the torsion spring arrangement after mounting to the sleeve or collar, so that those fingers are not deformed or bent, permanently bent, during the reversal of the reciprocation of the casing which carries these scratchers in the well.

Q. Do these scratchers all operate, where they permit or take advantage of the torsion of the fingers to yieldably [3634] hold the ends of the scratcher wires in engagement with the wall bore?

The Witness: May I have that question read, please?

(Question read by the reporter.)

(Testimony of William A. Doble.)

A. Yes, sir, that is correct. That is—

Q. And do all these scratchers—and I mean all of them—by “all of them” the exhibits which you have in front of you, which are Exhibits IIII, EC—

A. CK.

Q. What? A. CK.

Q. CK? All right, CK. A. EJ.

Q. EJ, 72— A. And 57.

Q. —operate where the wall of the bore, well bore, is abraded by the ends of the wires?

A. Yes, sir.

Q. What is the function of that abrading, Mr. Doble?

A. The function of the abrading caused by the free ends of the spring fingers is to scratch the mud cake from the well bore and also scratch the well bore in the productive area so as to open the pores of the permeable area, so that the oil or gas may freely flow from that particular area of the well bore, particular zone or area of the well bore. [3635]

Q. Now, Mr. Doble, you have presented a sketch of a force diagram indicating the angular relation of these wires of the wall-cleaning guide to the collar. I believe that sketch that you offer was—

A. It is GD.

Q. Looking at the scratcher wire, which I believe you have lettered “E” in Exhibit GD, would you say it was correct or incorrect to say that that wire E, as you have shown it in Exhibit GD, was substantially radial?

(Testimony of William A. Doble.)

A. No, I would say it is not substantially radial. It has a sidewise inclination. I believe you are referring to the scratcher wire B which I have shown as the main wire of the scratcher body on Defendants' Exhibit GD.

Q. Pardon me. I took the wrong letter. Which is the scratcher wire that extends outwardly from the collar; is that B? A. Pardon me?

Q. Correct my previous question to use B. Would you say that the wire B is substantially radial?

A. No, sir; it is not in its effective operation. It has a sidewise, a material sidewise [3636] inclination.

* * *

Q. Do you have a model, Mr. Doble, which is comparable with the exhibit of Figure 4 of the Wright patent, Exhibit 38? If so, which one is it?

A. Yes, sir, I have. It is Defendants' Exhibit CK. [3638]

Q. Now, do the wires in Exhibit CK, or as they are shown in Figure 4 of the Wright patent, extend outwardly from the collar substantially radially?

A. Not for their full length after the wire leaves the periphery of the sleeve of the scratcher which the wires swing about an arc of a circle. At that portion of the scratcher wire the wire is not along a radius of the scratcher body. However, after it passes around the arc of the circle, then the wire may or may not travel along a true radius of the scratcher body.

(Testimony of William A. Doble.)

So that, in broad language, you might say it is radial, but it is only radial for a portion of its entire length. It has a sidewise inclination or angular relation with the sleeve from the point at which it leaves the sleeve until it passes around the radius of the circular portion bent in the wire abrading finger.

Q. And does that sidewise inclination of the structure, as you have described it, have an operative effect in the operation of the scratcher like Figure 4, or this exhibit which you have in your hand, Mr. Doble, which is Exhibit EJ? A. GD.

Q. GD.

A. Yes, sir; it definitely has, as I have portrayed the diagram of forces in Defendants' Exhibit GD, which illustrates clearly the body of the bend formed in the wire finger [3639] from the point it leaves the periphery of the sleeve of the scratcher until it is completely rounded, and from after it has rounded out to a point, then extends—it may extend radially outwardly to the end of the wire. And the very point at which that particular wire finger is leaving the periphery of the scratcher body it has a very definite angle of inclination which gradually decreases as you round the curve in the wire until you come to the straight portion, which, as I say, may then be on a radial line or it may not.

Q. Mr. Doble, you have made a vector or force diagram, Exhibit GD, which I believe is related to which scratcher?

(Testimony of William A. Doble.)

A. It is related to the scratcher, Defendants' Exhibit CK.

Q. Now, if you made a similar force diagram of the forces operative with respect to the Weatherford scratcher, Exhibit EJ, would that force diagram have the same general principles or different principles?

* * *

A. Yes. In mechanics we resolve most angular forces [3640] into a parallelogram of forces and, in the same manner as I have done in Defendants' Exhibit GD, a diagram of forces or a parallelogram of forces would be drawn which would indicate the amount of rotative force which would be applied to rotate the sleeve around the casing of the well when the wires are reversed during the reversal of the casing within the well bore.

* * *

A. Only as to proportion. The same mechanical principle applies to both.

Q. (By Mr. L. E. Lyon): Was that fact demonstrated in any way in the tests which you made, Mr. Doble?

A. Yes, sir; they were. It was demonstrated in the test of a scratcher similiar to Defendants' Exhibit EJ, which is a Weatherford type of scratcher, rotated in a steel—reciprocated in the steel cylinder, and during that operation I observed that the free ends of the wires caused the sleeve or body portion of the scratcher to rotate about the well casing or

(Testimony of William A. Doble.)

simulated well casing. And I will say that the Weatherford scratcher, as shown or as exemplified in [3641] Defendants' Exhibit CJ, there was a greater rotation at each point of reciprocation for this particular form of the wire mounting than there was in the type of wire mounting as exemplified in Defendants' Exhibit CK when it was demonstrated in the same manner, in the same demonstrating machine.

* * *

Q. Now, Mr. Doble, you have testified with respect to Exhibit GD that the horizontal component of force causing rotation is a function of the angular inclination of the wire, have you not?

A. Yes, sir; I have.

Q. And you have testified that in scratchers like Exhibit IIII or EC that that force is magnified 30 times due to the fact that there are 30 wires; that is correct, is it not?

A. That is correct. However, I would call this to [3642] your attention: In Exhibits IIII and EC, there is an additional sidewise angle to those particular wires. However, if we refer to Defendants' Exhibit CK—

Q. Well, in the Exhibit CK—that is one of the points I was trying to get to—instead of there being 30 wires in the 5½-inch size there are 50 wires, are there not? A. Yes, sir; that is correct.

Q. So that force is reflected on not by 30 in the 5½-inch size, but 50, is that correct?

A. That is correct; and there would be 30 in the 3½-inch size which has 30 wires.

(Testimony of William A. Doble.)

Mr. L. E. Lyon: Now, I would like to have placed before the witness Exhibit 1, that is the file wrapper of the 388,891 application. I will place before the witness Exhibit CJ, which is offered as a replica of the structure shown in Exhibit 1.

Q. Now, Mr. Doble, will you point out to the court from the application Serial No. 388,891, Exhibit 1, and the model, Exhibit CJ, just how the wires are secured in position in that model and in accordance with the disclosure of the application, Exhibit 1?

Mr. Scofield: Maybe we can save time by stipulating that.

Mr. L. E. Lyon: Well, what is your offer? I may be able to accept it. [3643]

Mr. Scofield: I offer to stipulate, your Honor, that the wires are held in the collar of Exhibit CJ by means of an inner band which grips a portion of the wire, of each wire, within the collar to fixedly hold the wire ends within the band of the outer collar.

Mr. L. E. Lyon: I will accept that stipulation and ask Mr. Doble if that is a satisfactorily complete description to him?

The Witness: We might add to that, that each of the scratcher wires is a separate unit. They are not joined together, and each is separately confined between the inner ring and the outer peripheral sleeve of the scratcher body.

The Court: By inner ring, you are referring to what Mr. Scofield designated as a band?

(Testimony of William A. Doble.)

The Witness: Yes, your Honor.

The Court: So here, in this scratcher Exhibit—

Mr. L. E. Lyon: CJ.

The Court: —CJ the wires are independently held by the inner band?

The Witness: Inner band or sleeve.

The Court: Or sleeve, whereas in the other models you have been testifying about the two wires were held under a single stud?

The Witness: Yes, your Honor; that is [3644] correct.

* * *

Mr. L. E. Lyon: All right. If there is no stipulation, I will ask the witness to refer to Figure 1 of the application Serial 388,891 and tell me what the deformations are that are referred to in Figures 1 and 3 of the application, Exhibit 1, at 10, I believe, 10 and 2-B in Figure 3, and also shown at the points where the dotted lines pass around what appears to be a spot in Figure 1? [3646]

Mr. R. F. Lyon: Does your Honor want the drawing?

The Court: That is a copy of what?

Mr. R. F. Lyon: That is a copy of Exhibit 1.

The Witness: The deformation as shown in Figure 3 is indicated by the numeral 10 and that is for the purpose of projecting inwardly from the outer sleeve body of the scratcher, a projection about which the wire, that is, the end of the

(Testimony of William A. Doble.)

scratcher wire, is to be confined between the inner and outer rings of the scratcher body.

This application, Plaintiff's Exhibit No. 1, does not show pins extending through the outer sleeve portion of the scratcher body to confine the pins, but does show deforming the outer periphery of the scratcher body the sleeve of the scratcher body in the same manner as the little depressions are shown in Defendants' Exhibit CJ, and those depressions which appear on the outer surface of the sleeve cause projections upon the inner side about which the wires from the scratcher fingers are bent and confined between the inner and outer rings or sleeves of the scratcher body.

Q. (By Mr. L. E. Lyon): Now, from Exhibit No. 1, that is the Hall application, Serial No. 388,-891—and it is important to get three 8's in that number instead of two—I will ask you to refer to page 15 and Claim 19 and tell me just what that claim defines, and you may, in that explanation, if you desire, refer to the model, Exhibit CJ, to [3647] point out just what that claim means and defines.

A. I will now read from Plaintiff's Exhibit No. 1, page 15, Claim 19:

"In a well bore scratcher, a sleeve mountable on a well string and having openings, a plurality of scratching elements projecting outwardly from the sleeve for abrasive contact with the wall of a surrounding well bore, the scratching elements extending through said openings with their inner ends mounted on the inner surface of the sleeve and

(Testimony of William A. Doble.)

extending axially thereof and terminating in lateral projections extending circumferentially of the sleeve, and a collar in the sleeve fixing said inner ends of the scratching elements and their lateral projections between the collar and the sleeve."

Reading Claim 19, we find, "In a well bore scratcher"—well, Defendants' Exhibit CJ is a well bore scratcher—"a sleeve mountable on a well string"—we have the sleeve of the scratcher body and, as we have previously pointed out, it is mounted upon a well string, heretofore referred to as the casing which is to be run into the well.

The claim further defines that the sleeve shall have openings. We have the plurality of square openings, one opening positioned adjacent each side face of the scratcher body. [3648]

"* * * a plurality of scratching elements projecting outwardly from the sleeve for abrasive contact with the wall of a surrounding well bore, * * *" We find projecting from each of the openings, from a coil spring, the free end of a scratcher wire which is arranged to engage the surface of the well bore and to scratch that surface to remove the mud cake and to open up the surface, so we do have the scratcher elements extended through said openings. As I pointed out, as they extend through, there is formed in that opening a coil torsional spring.

"* * * the scratching elements extending through said openings with their inner ends mounted on the inner surface of the sleeve * * *" Well, as we can see by looking on the inner surface or in the bore of

(Testimony of William A. Doble.)

the sleeve portion of the scratcher body, we see that the inner end of the wire extends longitudinally of the scratcher body until it passes under a collar which is mounted within the bore of the scratcher body.

The scratching elements then "extending axially thereof and terminating in lateral projections extending circumferentially of the sleeve * * *" After the wire has passed under the collar, it is not observable in Defendants' Exhibit CJ, but would follow the pattern as shown in the drawings of Plaintiff's Exhibit No. 1, and referring particularly to Figure 1 of Plaintiff's Exhibit 1, there appear in this [3649] figure the casing upon which the scratcher is mounted, the scratcher body or sleeve, the square holes in the body portion, the scratching element or wire projecting from the square hole, we can see the coil springs located within the hole and we can see the inner end of the scratcher element projecting toward the center of the scratcher body, that is, in longitudinal direction, until it passes under the inner collar. From there on the path of the inner end or fastening end of a scratcher element is shown by broken lines, as it passes under or between the collar and sleeve portion of the scratcher element. And there are little, sort of round dots that appear, one closely adjacent the position of the wire as it passes under the inner collar, and another dot which represents the projection caused by the indentation of the sleeve portion of the body adjacent the other side of the collar

(Testimony of William A. Doble.)

about which the dotted line of the confined end of the scratcher element passes at right angles and then passes to adjacent the next of the scratcher wires to the right of the one which I am describing. In other words, the wire passes under the collar to adjacent the opposite edge of the collar and then turns at right angles and finally ends under or adjacent another of the projections which are pressed through the sleeve and also at the location of the next adjoining scratcher element.

Q. And are not those punch marks shown on the outside [3650] sleeve of Exhibit CJ at the eyes where the inner-secured ends of the wires, or fixed ends of the wires on the inside of the sleeve, bent at the two right angles made as shown in the drawings, Mr. Doble? A. Yes, sir; that is correct.

Q. All right. Now, proceed with this, please.

A. The next element in the claim defines "a collar in the sleeve fixing said inner ends of the scratching elements and their lateral projections between the collar and the sleeve." As I pointed out before, we have the annular collar which is mounted within the body portion of the outer sleeve of the scratcher body and confines the free ends—or confines the inner ends, the inner ends which are to be fastened, of the scratcher wires, between the collar and the sleeve.

Q. Have you finished with that answer?

A. Yes, sir.

Q. Do any of the structures exemplified by any of the exhibits that you have before you, and which

(Testimony of William A. Doble.)

are here as the structures manufactured and sold by both plaintiff and defendants, include anything—include a structure which is defined by this Claim 19?

A. No, sir. They do not.

Q. Do any of the structures of either plaintiff or defendants include an inside sleeve, an outside collar, [3651] between which the inner ends of the wires are confined as in Defendants' Exhibit CJ?

A. They do not.

* * *

Q. (By Mr. L. E. Lyon): Mr. Doble, I will refer you to the file wrapper, Exhibit No. 1, page 58 thereof, which is the communication of the Patent Office to Thomas E. Scofield, dated May 8, 1945, and which states: "This Is a Final Rejection and Closes the Prosecution Before the Primary Examiner," and ask you if it is not true that the only claim that was indicated as allowable at that time was Claim 19?

A. Yes, sir. That is correct. [3652]

Q. Now, referring to the next part of the application—no response, as shown by this file, was ever made to the final rejection of that application?

Mr. Scofield: I will stipulate that.

Mr. L. E. Lyon: So that the application then became formally abandoned, is that correct?

Mr. Scofield: That is correct.

* * *

Q. (By Mr. L. E. Lyon): Now, Mr. Doble, will you take Exhibit No. 39, that is the plugging patent,

(Testimony of William A. Doble.)

and give us a thumbnail sketch of that patent and its application to this problem?

A. Yes, sir. Mr. Wright has already gone into the [3653] necessity for forming plugs in oil wells either at the bottom or forming a bridge in the upper portion of an oil well bore, and the manner in which scratchers are used to prepare the surface of a well bore in the location of the plug so that it can be cemented and the cementing provided with a good bond between the cement and the surface of the well.

The cementing operation employed, or the cementing method employed in Defendants' Exhibit 39, that is the Wright patent '352, is carried out in a very similar manner to the method carried out in his patent '372. There is a major difference, however, and that resides in the use not of the casing which is to be run into the well and then left in the well for producing the well, that is, for the purpose of conducting gas or oil from the well. In a plugging job, it is customary to mount the scratchers on a stub or a stinger, as it is called in the art, which is attached to the lower end of the drill rod. That drill rod then, with these scratchers (indicating) mounted upon it in the same manner as they are mounted on the well casing and as shown on Defendants' Exhibit CE and also in Plaintiff's Exhibit 42, that is the B & W Bulletin 104, between suitable stop means, to permit the scratcher to have some longitudinal movement and to freely rotate on the section of the pipe or stinger, is run down

(Testimony of William A. Doble.)

to form the plugging. With the scratcher so mounted on the stinger or on drill pipe, the drill pipe is then run into [3654] the well to the location at which the plugging is to be formed. When that area is reached, the drill rod, the drill pipe is reciprocated in the same manner that the casing is reciprocated in the '372 patent, so that the free ends of the wire bristles or fingers of the several scratchers mounted on the string act on the wall of the well bore to clean the mud from the wall of the well bore and prepare it for a cementing operation.

During the reciprocation and cleaning of the well bore, a fluid, which may be a drilling mud, is pumped down through the drill rod and out the end of the drill rod and passes up—

Q. By "drill rod," you mean drill stem?

A. Drill stem—and passes up through the area which is being scratched and conditioned, so as to carry away the mud cake and filter cake which had accumulated on that particular portion of the well bore.

Following the mud, there is a cement slurry, which is a fluid, pumped down through the tubing, out the end and up through the area which has been cleaned.

The drill string is reciprocated during the flowing of the liquid cement down into the well and during its passage up around the scratching elements. Near the completion of the flow of cement or during the flowing of the cement, as the cement fills up the area to be plugged, the drill stem is lifted as the

(Testimony of William A. Doble.)

cement flows in. And, in that respect, it [3655] differs from the first method patent of Wright, Plaintiff's Exhibit 37, namely, in that earlier patent the scratchers were mounted on casing and the casing was left in a particular location during the cementing, and the cement sealed the casing to the well bore.

In this case of the plugging patent, the drill stem is lifted and the scratchers are lifted clear of the cement plug, and the entire apparatus is completely removed from the well, that is, the drill string with the scratchers on it are entirely removed from the well.

The cement is allowed to set and then such other operation as is required to bring the well into production or complete the well or carry it on.

Q. Now, the claims of this patent define what, Mr. Doble, as differentiated from the claims of the Exhibit 37 patent?

A. They define, briefly, that the element upon which the scratchers are mounted, together with the scratchers, is removed from the well after the completion of the plugging operation; whereas, in Plaintiff's Exhibit 37, the first method patent to Mr. Wright, '372, the scratchers, as they are mounted on the casing, are left in the well and are sealed in the well during the cementing operation and are a permanent part of the well structure.

Q. Is there any function in this particular patent of [3656] utilizing the scratchers to open up the productive formation?

(Testimony of William A. Doble.)

A. Only insofar as cleaning the wall preparatory to a cementing operation.

Q. Well, is or is not that a function of this scratching operation, to remove the filter cake from the productive formation?

A. Yes, sir; that is correct.

Q. And to put, you might say, a condition of virgin formation for reception of the cement?

A. That is correct. [3657]

* * *

Cross-Examination

By Mr. Scofield:

Q. The cementing method in the '372 patent, Exhibit 37.

The Court: To which you referred in your testimony.

A. I do not find the word "cement" but I find sufficient teaching in the specification to clearly indicate that the invention was broader than the use of the word "cement," and the fact is the invention is divided into two classifications.

One classification is when you are running an imperforated casing into the well and that imperforated casing is to be sealed in the well bore. Now, the sealing agent may be cement, it may be asphaltum, or it may be a plastic.

So the patent is broader than just including the word "cement." It covers any fluid that can be pumped down the well, which will seal an imperforated casing to the well bore.

(Testimony of William A. Doble.)

The other phase of the invention, as defined in Plaintiff's Exhibit 37, resides in the placing of a perforated liner. In that case there is no sealing of the perforated casing. You neither cement it in nor do you seal it by cement or a plastic.

So there are two distinct classifications of oil-well completion methods set forth in the patent, and it covers, in my opinion, the use of cement, asphalt, or any other sealing agent which may be used to permanently set a casing in the well bore, as is clearly defined in the specifications of Defendants' Exhibit 37. [3699]

Q. (By Mr. Scofield): And have you read the prosecution of that patent while it was being prosecuted through the Patent Office?

A. Yes, sir; I have. [3700]

* * *

Redirect Examination

By Mr. L. E. Lyon:

Q. There seems to be some dispute about your testimony with reference to this Exhibit EL on cross-examination. [3701] The question is: Does this Exhibit EL represent at any point a condition similar to or the same as the tests that you made of the Weatherford scratcher?

A. Yes, it does.

Q. Where?

A. Somewhere between the section which rep-

(Testimony of William A. Doble.)

resents the depth 8,475 feet and where the free ends of the wire leave the sleeves of the spiral casing.

Q. Now, you would say, then, that the line which I am pointing to on the outside of Exhibit EL represents the end of the 8 13/16ths diameter, does it not? A. It does.

Q. And the line then proceeds to a point where you see a line at the bottom of the structure which represents, I believe, the point where the outside shell becomes 14 13/16ths?

A. That is correct.

Q. Now, you say it is somewhere between those two points that represents a condition similar to or the same as the tests that you made?

A. Well, it would not extend quite as far as that last line which you have mentioned because the free ends of the wires have discontinued their contact with the spiral casing some distance before they reach the last line which you referred to, which is the casing of the 14 13/16ths diameter.

Q. I am picking out one wire, Mr. Doble, which is [3702] slightly bent between its ends and which engages the outside cylinder. And if I had a tag, I would tie a tag on it.

Have you got a tag?

I am going to tag that Exhibit EL-1, or you pick out the one yourself which you would think more closely approximates the precise condition of your tests and attach the tag and mark it "EL-1."

A. Mr. Lyon, I have placed a tag bearing the identification of EL-1 on one of the wires which I

(Testimony of William A. Doble.)

would state closely resembled the condition of the wire of the Weatherford scratcher which we tested in the machine, test machine, Defendants' Exhibit NNNN-19.

* * *

ROLAND E. SMITH

called as a witness by defendants, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Roland E. Smith.

Direct Examination

By Mr. L. E. Lyon:

Q. What is your occupation, Mr. Smith?

A. Export sales representative. [3703]

Q. Representing whom?

A. Abegg & Reinhold Co., Advance Oil Tool Co., B & W, Fullerton Manufacturing Co., E. W. Farwell Co., and Corona Oil Specialties.

Q. What was your occupation in 1947?

A. I was an export sales representative.

Q. In 1948? A. The same.

Q. Who did you represent at that time?

A. 1947 or 1948?

Q. Both.

A. In 1947 I represented Abegg & Reinhold Co., Globe Oil Tool Co., Atlas Co., Weatherford Spring Co.; in 1948 I represented the same companies, with

(Testimony of Roland E. Smith.)

the exception of Weatherford Spring Co., and did represent B & W at that time.

Q. What time did that change take place of your representation of Weatherford Spring Company and B & W?

A. December 31, 1947, was the end of my connection with the Weatherford Spring Company and in January of 1948 I started with the B & W.

Q. As a result of your employment or growing out of your employment by the Weatherford Spring Company did you institute a suit against Mr. Jesse E. Hall, Sr.? [3704]

* * *

Q. (By Mr. L. E. Lyon): Mr. Smith, did you represent Mr. Hall of the Weatherford Spring Company at any time in Venezuela? A. I did.

Q. I will place before you certain documents which have heretofore been placed in evidence as Defendants' Exhibits DA, DB, DC and DC-1, and will ask you if you are familiar with these documents or this transaction?

I also hand you Exhibit CY. Include that in the same question. A. I am.

Q. Are these photostatic copies of the same exhibits that were offered in your suit at Fort Worth against Mr. Hall?

A. They are. They have my own handwriting as exhibit numbers placed thereon.

Q. There were certain centralizers called for by these documents. Were these centralizers, to your knowledge, delivered at Venezuela?

(Testimony of Roland E. Smith.)

A. They were.

Q. Do you have any documents, or did you have any documents at any time which showed the exact weights of these centralizers as they were delivered in Venezuela? A. Yes, sir.

Q. What are those documents?

A. Those are shipping weights. The shipping weights [3707] are included upon the packing list prepared by the Weatherford Spring Company in Weatherford, Texas. I have a copy.

Q. Can you produce that copy? A. I can.

Q. Will you do so? A. Here?

Q. Yes. A. You mean at the present time?

Q. Yes.

A. I do not have them. I have an analysis statement. I can produce them.

Q. Let us produce your analysis and then I will ask that you produce the originals. Let us see if the analysis will suffice at the present time.

A. I have prepared an analysis of spiral centralizers and scratchers in the sizes so indicated. [3708]

* * *

Q. What is this document, Exhibit GM, for identification?

A. Exhibit GM is an analysis of weights of spiral centralizers and scratchers manufactured by Weatherford Spring Company, and compiled from the records in the years 1945 to and including 1947.

Q. From what material was this compilation made?

(Testimony of Roland E. Smith.)

A. This compilation was made from the packing lists as supplied to me by Weatherford Spring Company in Weatherford, Texas.

Q. Where?

A. For shipments to various oil companies in Venezuela, Colombia, Peru, Arabia, Denmark, Kuwait, Trinidad; in other words, for all shipments made outside of the United States.

Q. Now, were the weights which you have indicated as in the second column of Exhibit GM weights of packing lists taken from any actual written material? A. Yes, sir.

Q. What was that written material?

A. That, the column 2, starting from the left-hand side, are the weights that were taken actually from the [3709] packing lists.

Q. By whom?

A. In the preparation of the shipments under the authorization of J. E. Hall, Jr.

Q. I mean they were placed on Exhibit GM by whom and from packing lists you state; who put them on Exhibit GM? A. I did.

Q. When?

A. Approximately two weeks ago.

Q. Now, in the third column of Exhibit GM, you have a further column entitled, "Weight List Furnished by J. E. Hall, Jr., 2-1-46." What does that column refer to?

A. That was a list that was furnished by J. E. Hall, Jr., and with a letter that I was to use in compiling different calculations for submitting of quota-

(Testimony of Roland E. Smith.)

tions in answer to inquiries received from the various foreign purchasing departments.

Q. Now, the fourth column is entitled, "Bulletin Published, 2-1-47," and it has a series of figures in that column. What are those figures?

A. Those are weights published by the manual, so designated, which is an exhibit in this case—I don't have it, but under that date, 2-1-47.

Q. And what are these figures, pounds, ounces, or what? A. Pounds. [3710]

Q. Pounds what? A. Pounds per unit.

Q. Now, you were in Venezuela and you state that you received the scratchers which were sent there. Did you ever take any photographs of them?

A. I did.

Q. What happened to the photographs?

A. The photographs were an exhibit in my lawsuit, which were never returned to me.

Q. What happened to the exhibits? Did you make any effort to recover them? A. I did.

Q. What happened to them?

A. One of the attorneys connected with Mr. Hall picked up all of the exhibits after they were returned from the appellate court in New Orleans, both plaintiff's and defendants' exhibits.

Q. Did you make a demand for the return of your exhibits? A. Yes, I did.

Q. And what response did you get to that demand?

A. I was advised that the exhibits had been destroyed. [3711]

(Testimony of Roland E. Smith.)

Q. (By Mr. L. E. Lyon): Now, were you on any of the wells in Venezuela upon which the centralizers were used that were delivered in Venezuela pursuant to any of these [3712] exhibits, DA, DB—

A. I was.

Q. —CY, and what are the other ones?

A. DB, DA, DC and CV.

Q. Were those scratchers of any peculiar or different construction than the scratchers customarily sold, if you know, Mr. Smith?

A. They were not.

Mr. Scofield: Centralizers, you mean?

Q. (By Mr. L. E. Lyon): I mean those centralizers. Were the centralizers of standard construction?

A. They were the centralizers as contained in their catalogs under that date.

Q. There were 7-inch centralizers called for by these exhibits in front of you. Do you know what the weights of those centralizers were?

A. I do.

Q. What was their weight? A. 25 pounds.

Q. There has been handed to me, Mr. Smith, a series of photostats of further documents, some of which I believe correspond to Exhibits DA and DB, but with which I believe you are personally familiar. I will ask you to take this file and tell me what it is, and if there are duplications of those already here in evidence, just state it, and we will [3713] remove the duplicates.

(Testimony of Roland E. Smith.)

Q. Just a moment, Mr. Smith, and if it can't be stipulated, who were the attorneys that represented Mr. Hall in your case at Forth Worth?

A. Thomas E. Scofield and Ben Hagman on the main suit, and on the supplemental suit there was a firm from Fort Worth, Brown [3714] somebody—

Mr. L. E. Lyon: May it be stipulated, Mr. Scofield?

* * *

Mr. L. E. Lyon: The question before the witness was to identify these documents in this file.

The Witness: I have associated the ones I can with these exhibits that are in evidence here.

Mr. L. E. Lyon: All right. We will remove those from the file where there is duplication.

Q. And I would like to have you explain what the other documents are. Those that are duplicates, take those out. A. All right, here.

Q. Now, this is a duplicate of this (indicating)?

A. Yes. This is a duplicate of this, and this is the cost price that went with all of those.

Q. All right. Just give me the duplicates and I will take them out.

Is that duplicated in here?

A. That is a duplication of this (indicating). This is the cost price, or the retail selling price of that.

Q. All right, that is not a duplicate?

A. No.

(Testimony of Roland E. Smith.)

Q. All right, I have the duplicates [3715] removed.

Now, taking the other documents, will you tell me what they are and also if they were exhibits used—if they are photostats of exhibits used in your Fort Worth case against Mr. Hall?

A. They are.

Exhibit CY is a photostatic copy of an invoice of the Weatherford Spring Company of Venezuela, C. A., to Mene Grande Oil Company, C. A., Apartado 45, San Tome Terminal, Barcelona, Venezuela, South America. [3716]

A. Do you want the exhibit number in the other suit or not?

Q. No, no. Wait a minute. There is no exhibit number on this.

A. There is none marked on that, no.

Q. Oh, yes, there is CY on the back.

A. Yes.

Q. Does this page that you have correspond with CY? It doesn't, does it? It is another transaction?

A. No; it is the same transaction only it is changed a little bit as to quantities.

Q. What do you mean, is the same transaction but it is changed a little bit as to quantities?

A. Originally this order was issued to Weatherford Spring Company in Weatherford, Texas, by the Gulf Oil Corporation on behalf of Mene Grande Oil Company out of Pittsburgh.

Q. Do you know that to be a fact yourself?

A. I do.

(Testimony of Roland E. Smith.)

Q. How? A. I wrote the order up.

Q. Okay. Proceed.

A. This order was presented by the Gulf Oil Corporation of Pittsburgh and export procedure confirming quotation was made by me and bona fide purchase order was then issued by Gulf Oil Corporation for the equipment so contained. [3717] This particular order was one of the orders that was in the dispute in my main trial, whereby Weatherford Spring Company refused or did not ship it as the order originally stated. Rather than that, they shipped it to themselves in Venezuela and then in turn shipped it to the Weatherford Spring Company of Venezuela, shipped it to the Mene Grande Oil Company and the Weatherford Spring Company of Texas billed the Weatherford Spring Company of Venezuela for like equipment on what their was determined cost plus 10 per cent. In other words, approximately \$8,083 worth of equipment turned out to be \$156,194 order when billed to the ultimate consumer.

Q. And the evidence in your Fort Worth case showed that \$156,194 was actually what the Mene Grande Oil Company paid for that order?

A. It did.

Q. And the items that are shown on this document that you have called for 3,000 7-inch standard solid scratchers? A. That is correct.

Q. The invoice also calls for 500 7-inch spiral centralizers? A. That is correct.

Q. The cost set forth for these 7-inch 25-pound spiral centralizers is \$1.93, is that correct?

(Testimony of Roland E. Smith.)

A. That is correct.

Q. And that is what the Weatherford Spring Company of [3718] Texas billed the Weatherford Spring Company of Venezuela for those devices, is that correct?

A. That is correct. That is correct.

Q. This document that you have referred to here is certified to be a true copy of—what is this down here? Is that your exhibit number in the Fort Worth case?

A. That is my handwriting: "Venezuela E129." That was Plaintiff's Exhibit.

Q. In that case under that designation?

A. Yes, sir.

Mr. L. E. Lyon: I will offer this additional invoice just identified by the witness in evidence as the defendants' exhibit next in order.

* * *

The Clerk: GN.

* * *

Q. (By Mr. L. E. Lyon): Now, will you proceed? I believe there are other of these transactions here that you have before you which do not correspond to those in evidence. And I hand you another invoice of the Weatherford Spring Company to the Gulf Exploration Company, care of the Gulf [3719] Oil Company and ask you if you can identify that invoice? A. I can.

Q. What is that invoice?

A. This is an invoice by the Weatherford Spring

(Testimony of Roland E. Smith.)

Company, selling to the Weatherford Spring Company of Venezuela, both in Weatherford, Texas; and the material specified it was shipped to the Gulf Exploration Company, care of the Gulf Oil Corporation, for shipment to Kuwait, Gulf's Order No. KUOCO NY/W-758. Prices contained thereon are the minimum cost prices used between Weatherford Spring Company and Weatherford Spring Company of Venezuela, C. A.

Mr. Scofield: Any commission of 10 per cent?

The Witness: Sir?

Mr. Scofield: Is there a 10 per cent commission added?

The Witness: 10 per cent. It is cost plus 10 per cent.

Q. (By Mr. L. E. Lyon): Are you familiar with the material which was sold on this invoice?

A. I am.

Q. Was this standard equipment?

A. It was.

Q. Were the scratchers and centralizers of standard weights? A. That is my understanding.

Q. Did those scratchers and centralizers as sold on this invoice correspond in weights to those set forth on [3720] Exhibit GM for identification?

A. Yes, sir.

Mr. L. E. Lyon: I will offer this document in evidence as the defendants' exhibit next in order.

* * *

The Clerk: Defendants' Exhibit GO in evidence.

* * *

(Testimony of Roland E. Smith.)

Q. (By Mr. L. E. Lyon): I hand you a further document, Mr. Smith, which is a Weatherford Spring Company invoice of October 10, 1947, and which was identified in your action as Venezuela Exhibit E105, together with a document I note on the bottom says, "Venezuelan voucher," and ask you if you can identify those two documents?

A. I can.

Q. What are they?

A. The invoice of the Weatherford Spring Company marked E105 is the invoice used to follow the transaction of the exhibit just entered and just explained.

Q. What was that last number, GO?

The Clerk: GO.

A. GO, whereby Weatherford Spring Company of Venezuela in turn invoiced the Gulf Exploration Company in Pittsburgh covering the material for an amount of \$61,224.15 for the [3721] materials so specified.

Q. And what is the voucher that you have in your hand?

A. The voucher is a photostatic copy of the check received, with the discount, cash discount taken, amounting to \$60,031.06.

Mr. L. E. Lyon: I will ask that these two documents be clipped together and be received in evidence as the Defendants' Exhibits GP-1 and GP-2.

* * *

(Testimony of Roland E. Smith.)

Q. (By Mr. L. E. Lyon): Now, Mr. Smith, the devices that were sold on the GP-1 and GP-2, were those standard structures?

A. That was the equipment manufactured at that time and so advertised in their catalogue.

Q. Were the scratchers and centralizers that were delivered in accordance with GP-1 and GP-2 of the standard weights? A. They were.

Q. Were these also transactions, as shown by GP-1 and GP-2, which you personally negotiated?

A. I did. Now, Mr. Smith, I hand you a further document, or two further documents which are together marked [3721-A] E114. I presume that is the exhibit number in your case in Fort Worth, is that correct? A. Yes, it is.

Q. Will you tell me what these documents are?

A. The Exhibit marked E114 in the lower right-hand corner is an invoice of Weatherford Spring Company to Weatherford Spring Company of Venezuela. Invoice E-224, dated 12-17-47 covering 200 5½-inch standard solid scratchers and 40 5½-inch spiral centralizers, amounting to \$184.80.

Q. Does it give the per-piece price of each of those scratchers and centralizers?

A. It does: 49 cents for the scratcher, 5½-inch standard solid scratcher, and \$1.75 for the 5½-inch spiral centralizer.

Q. Were those standard equipment?

A. They are.

Q. Did you negotiate that sale? A. I did.

Q. Were the scratchers and centralizers de-

(Testimony of Roland E. Smith.)

livered of standard weight? A. They were.

Q. How did they compare with the weights as shown by Exhibit GM for identification?

A. They compared with the weights.

Q. By "compared with," you mean the same as?

A. Same as the weights contained in the Exhibit GM. [3722]

Q. The second document that you have in your hand, what is that?

A. The second document is marked E-114, also, in the lower right-hand corner, is Weatherford Spring Company of Venezuela, C. A., invoice to the Creole Petroleum Corporation, 15 West 51 Street, New York 19, N. Y., their order K-25292, dated 11-26-47, covering the material I just enumerated on the previous invoice, but bearing the price of \$8.00 per 5½-inch scratcher and \$28.60 per 5½-inch spiral centralizer, totaling \$2,675.40, which includes export discount plus the boxing charge.

Mr. L. E. Lyon: I will ask that these two invoices identified by the witness and which are marked in their lower right-hand corners E-114 be received in evidence as Defendants' Exhibits GQ-1 and -2.

* * *

Q. (By Mr. L. E. Lyon): Now, Mr. Smith, I hand you two other invoices marked in their lower right-hand corners, E-107, both of them. Will you tell me what those are?

A. E-107 is an invoice from the Weatherford Spring Company dated October 24, 1947, their

(Testimony of Roland E. Smith.)

order 106, to the Weatherford Spring Company of Venezuela, C. A., in Weatherford, [3723] Texas.

Do you want all of the material enumerated?

Q. I would like to have whether it sets forth the particular items which were sold and the per-piece price of each of the items.

A. It sets forth 89 $\frac{5}{8}$ -inch spiral centralizers, \$2.11 each; 80 7-inch spiral centralizers at \$1.93 each; 40 13 $\frac{3}{8}$ -inch cement baskets at \$8.25; 200 9 $\frac{5}{8}$ -inch standard solid scratchers at 74 cents each; 560 7-inch standard solid scratchers at 59 cents each; and 20 55-inch tong pull-back springs at \$1.50 each; or a total of the \$1,161.60 plus 10 per cent, a total of \$1,277.76.

The other invoice, marked E-107, is from the Weatherford Spring Company of Venezuela to the Arabian American Oil Co., 200 Bush Street, San Francisco, California, their order CAD-10153-A, invoice dated 10-16-47, covering identical items as just enumerated, but for a difference in prices per item: \$42.35 on the first item; \$33.00 on the second; \$41.25 on the third; \$9.35 on the fourth; \$8.25 on item 5; and \$6.60 on item 6, or a total of \$14,300, less the export discount, plus the export boxing charge, leaving a total invoice value of \$13,942.50.

Q. Were these standard items that were sold on these invoices that you have just identified?

A. They were. [3724]

Q. Of standard weights? A. They were.

Q. Did you negotiate the sale yourself?

A. I did.

(Testimony of Roland E. Smith.)

Mr. L. E. Lyon: I will offer these two invoices just identified by the witness in evidence as Defendants Exhibits next in order. They will be—

* * *

Q. (By Mr. L. E. Lyon): I hand you a photostat on which I note in the bottom is marked 51-3F, photostat of two sides of a check. Can you identify that?

A. That is identified over here as Plaintiff's Exhibit P-119. On the front side it is a check No. 09123 Maracaibo, Venezuela, dated February 17th, 1948.

Q. To whom is the check made payable?

A. Weatherford Spring Company, Post Office 303, Weatherford, Texas.

Q. Just a moment, Mr. Smith. The invoices which you have identified with respect to this matter show that the Mene Grande Oil Company was invoiced by the Weatherford Spring Company of Venezuela. Is this check made to the [3725] Venezuelan company or to the American company?

A. It is made to the American company, Weatherford Spring Company.

Q. And does this check on its back, do you recall, have a personal endorsement of any person?

A. It does.

Q. Who? A. Jesse E. Hall, owner.

Mr. L. E. Lyon: I will offer this check, this photostat of this check, in evidence as the Defendants' Exhibits next in order, GS.

* * *

(Testimony of Roland E. Smith.)

Q. (By Mr. L. E. Lyon): I now hand you a second check, Mr. Smith, likewise made payable to Weatherford Spring Company, a photostat of it. Was that also an exhibit in your case?

A. It was Exhibit P-120.

Q. To whom is this check made payable?

A. This check is made payable to the Weatherford Spring Company, Box 303, Weatherford, Texas.

Q. What is the amount of this check?

A. This check amounts to \$130,807.20.

Q. Is this check made in payment of any of these invoiced matters which are before you? [3726]

A. It is; yes, sir.

Q. And does this check carry a personal endorsement on its back?

A. This does not indicate a personal endorsement. It is obliterated. Weatherford Spring Company of United States, and then also Weatherford Spring Company of Venezuela, C. A. [3727]

Mr. L. E. Lyon: I will offer this check in evidence as Defendants' Exhibit GT.

* * *

Q. (By Mr. L. E. Lyon): Mr. Smith, at the time that this case was going to trial, I believe, our schedule to go to trial in 1951, in the fall, did I request that you be present to act as a witness?

A. That is correct.

Q. Just prior to that time were you in Venezuela? A. I was.

(Testimony of Roland E. Smith.)

Q. Were you detained in Venezuela?

A. I was.

Q. On charges instituted by whom?

A. Mr. J. E. Hall's attorney.

Q. What were the charges?

A. A letter was filed with the Internal Revenue Department in Venezuela, along with two schedules which contained commissions that had been paid me in the United States, but in the usual course of my procedure or association with Weatherford Spring Company, and was a schedule of commissions paid from the judgment of my lawsuit amounting to approximately \$120,000 in which it was inferred that those commissions [3728] were paid by the Weatherford Spring Company to me in Venezuela and I was thereby detained.

Q. How long were you detailed in Venezuela?

A. Approximately three weeks.

Q. How did you finally get out?

A. I was caused to hire an attorney of the Gulf Oil Corporation and management of all the oil companies revealed their books to an inspector from the Internal Revenue Department to satisfy him of my statement that I had not received any money in Venezuela.

Upon completion of this audit there in both Caracas and Maracaibo and with a hearing before the Internal Revenue board, I was granted my Salvalicentia, which is an exit permit from the country.

(Testimony of Roland E. Smith.)

Q. At what time of the year 1951 did you get out of Venezuela?

A. According to my records it was in June, I returned to the United States, not completing the rest of my trip. [3729]

* * *

Redirect Examination

By Mr. L. E. Lyon:

Q. I place this file before you, Mr. Smith, and ask you to take just one of these. In the first place, Mr. Smith, you have handed to me a file of packing lists. Is this the file of packing lists from which you compiled Exhibit GM? A. It is.

Q. And what are those papers that are in this file?

A. This is a copy of a packing list pertaining to each order as enumerated and designated, covering the material on the specific order as mentioned, and gives the quantities, the type of box, the type of equipment, with the gross, net, and legal weights, and then the gross, net, and legal weights in kilos, along with the cubic dimensions of each box.

Q. Is such a packing list necessary under [3739] export regulations? A. Very necessary.

Q. And it is necessary under export regulations to state the precise gross and net weights of all the items shipped?

A. It must be in all instances of any type of equipment, because it permits the purchaser to con-

(Testimony of Roland E. Smith.)

tract for overseas shipment either by net, or either by gross weight or cubic content or a combination of the two.

Q. I have picked out one packing list here. I would just like to have you read the items on that packing list into the record.

Where did this packing list come from?

A. The packing list was forwarded to my office, the export office of Weatherford Spring Company, from the client after the furnishing of the order had been completed.

Q. Is this a copy of the packing list as actually supplied to the export authorities? A. It is.

Q. Will you just read this particular packing list, giving the date and all information on it, into the record?

A. The packing list states, "Shipped by: Weatherford Spring Company—Shipper's Order: E-120." It was shipped from Weatherford, Texas, and the customer's order is E-7333-P. The destination was the Mene Grande Oil Company, C. A., care [3740] of Gulf Oil Corporation, to "Notify Stone Forwarding Co., Houston, Texas."

The consignee was Mene Grande Oil Company, C. A., at Puerto La Cruz, Venezuela.

And description of the contents, package number, kind—it states:

"1 Wooden Cases 25 5½-inch Spiral Centralizers, 20 lbs. ea."—the value of 697.13, a gross weight of 697.2, a net weight of 500 pounds, a legal weight of 500 pounds; in kilos, 316.15 gross, net 226.8, the

(Testimony of Roland E. Smith.)

legal is 226.8; the cubic dimensions are 47 inches by 46 inches by 41 inches.

Q. What does that size mean? A. Sir?

Q. What do those size figures that you just read mean? A. The last figures, you mean?

Q. Yes.

A. The last figure is the cubic content of the box in which 25 spiral centralizers were contained in the shipment.

Q. That is, it gives you the three dimensions of the box, you mean? A. Yes.

Q. O. K. Proceed to the next item.

A. Do you want each item read?

Q. Yes. [3741]

Mr. Scofield: Before he does that, your Honor, I want it understood that my objection made yesterday stands against all this testimony.

The Court: Very well. Objection overruled.

A. Packages 2 to 9 are ditto.

Package 10, a wooden case of 25 7-inch spiral centralizers, 25 pounds each, the value of 804.38, a gross weight of 864.3, net weight 625, legal weight 625; kilos 391.9, gross 283.5, net 283.5, legal; cubic dimensions, 47 inches by 48 inches by 54 inches.

Q. (By Mr. L. E. Lyon): On that column you have read a gross weight of 864, I believe.

A. Yes.

Q. Pounds? A. 864.3.

Q. Is that the measured weight of the box containing these 25 centralizers? A. That is.

Q. That is the actual scale weight of that box?

(Testimony of Roland E. Smith.)

A. That is correct.

Q. Now, the weight of the centralizers that were in the box was a weight of 625 pounds?

A. Net.

Q. Is that correct?

A. That is correct. [3742]

Q. So each of those 7-inch spiral centralizers actually weighed 25 pounds, is that correct?

A. Correct. [3743]

* * *

BRUCE BARKIS

(Recalled)

Further Direct Examination

By Mr. L. E. Lyon: [3749]

* * *

Q. (By Mr. L. E. Lyon): Now, Mr. Barkis, you have on these charts, which you have identified, set forth, made numerous entries. Can you tell me, without regard to these charts, what the causes are of fluctuations in sales of scratchers and centralizers, from your experience in selling these items to the oil companies?

A. There are many such factors. I have listed them.

Mr. L. E. Lyon: All right. You have prepared a list of them.

Perhaps we can get at this faster by just offering

(Testimony of Bruce Barkis.)

the written list, which I will ask be marked in evidence at this time as Exhibit GV. [3760]

* * *

Q. Now, Mr. Barkis, you have prepared a penciled chart which you have entitled, "Typical installation illustrating overselling by Weatherford resulting in customer dissatisfaction." You have prepared this chart, have you?

A. Yes, I did. It is a sketch.

Q. Or sketch.

Mr. L. E. Lyon: I will ask that this sketch be marked as Defendants' Exhibit GW and will ask if we may have a like stipulation with respect to Exhibit GW, Mr. Scofield.

Mr. Scofield: Yes, I will so stipulate.

Mr. L. E. Lyon: That is, it may be deemed that the witness has testified in the manner illustrated by the sketch, [3761] Exhibit GW.

Mr. Scofield: That is my stipulation.

The Court: Very well.

Mr. L. E. Lyon: I will offer in evidence Defendants' Exhibit GW. I accept the stipulation.

* * *

Q. (By Mr. L. E. Lyon): Mr. Barkis, when you were at Houston during the recess, or at about that time, did you obtain, at my request, a list of the wall-cleaning guide sales from the Houston office? A. Yes, I did.

Q. And you have tabulated that list, too, have you? A. Yes, I have—at my instruction.

(Testimony of Bruce Barkis.)

Q. And this list that I have in my hand is the list of wall-cleaning guide sales, set forth by years, dollar value, and number of units, is that correct?

A. That is correct.

Mr. L. E. Lyon: I will offer the list in evidence as Defendants' Exhibit GX. [3762]

* * *

Mr. Scofield: I don't think it is worth while taking the time.

The Court: And you will stipulate that he will be deemed to have so testified?

Mr. Scofield: Yes; I will so stipulate.

The Court: Very well. Pursuant to the stipulation, Exhibit GX is received in evidence. [3764]

* * *

ROY BOWERSOCK

a witness previously called and sworn, recalled on behalf of defendants in rebuttal, was examined and testified as follows:

The Court: You have heretofore been sworn and testified?

The Witness: Yes, sir.

The Court: You are now recalled for rebuttal.

Direct Examination

By Mr. Scofield:

Q. Have you made further inspection of B & W sales records since you testified last?

A. I have.

(Testimony of Roy Bowersock.)

Q. For what purpose?

A. To determine the various types of scratchers, the amounts of various types of scratchers sold. The types of scratchers are wall-cleaning guides, rotating, Multiflex scratchers used on centralizers and the Nu-Coil scratchers, and also the amount of centralizers used on scratchers.

Mr. Scofield: Schedules and charts, your Honor, have [3774] been prepared by this witness and we have keyed in the exhibit numbers of these schedules and charts with the numbers of the same companies of charts that were offered previously. And I have requested the clerk to sort out the exhibits which have been made by this witness since he last testified, and will ask that those be put before him.

Q. Do you have a set of those, Mr. Bowersock, before you? A. I do.

Mr. Scofield: A copy of these have been furnished to the other side.

Q. I put before you, Mr. Bowersock, Exhibit 175-H, and describe briefly from what records that was prepared and what the exhibit is.

Mr. L. E. Lyon: Your Honor, I am willing to stipulate that this witness, if called, would testify that he obtained this information from the records of B & W, and would testify that this is a compilation of the material that he obtained from B & W.

The Court: Testify to the facts shown on the exhibits?

Mr. L. E. Lyon: That is all the facts that are

(Testimony of Roy Bowersock.)

shown on there, your Honor, that I stated that I would stipulate.

The Court: In other words, you will stipulate that he will be deemed to have testified, without repeating it here, to all the facts set forth in Exhibits 175-H and—— [3775]

Mr. L. E. Lyon: 175-H and 175-I; then these six tabulations here, your Honor.

The Court: Are they 175-H, -I, -J, -K, -L, -M and -N?

Mr. Scofield: No, sir. They are just 175-H and 175-I.

* * *

The Court: Very well. Will it be stipulated that this witness, without the necessity of repeating it, will be deemed to have testified to the facts shown on Exhibits 175-H, -I and 176-J , -K, 175-F and -G, 178-F and -G, 179-E and -F, 180-D and -E?

Mr. L. E. Lyon: Yes, your Honor.

The Court: And 181-B.

Mr. Scofield: Accept the stipulation.

* * *

Q. (By Mr. Scofield): I would like to have you take Exhibit 175-I, Mr. Bowersock, and explain to the court the significance of the meaning of the key, just that one exhibit. [3776]

* * *

A. The key simply indicates that the one type of markings or cross-hatching on these charts design-

(Testimony of Roy Bowersock.)

nates Nu-Coil scratcher sales and the other type designates Multiflex scratcher sales.

Q. (By Mr. Scofield): Are the sales shown on this chart, that is, is this chart a reproduction of any one of the former charts, except insofar as these key cross-sectioned areas are concerned?

A. That is right. This is the same chart that was previously put in as an exhibit, but I don't remember what the exact number of it was. It showed the scratcher sales of Import Tool Company to Canadian Gulf Company, and all that was done was to mark the chart with the Multiflex scratcher sales so as to make a designation between the two.

Q. Did you receive from Mr. Knapp any information in addition to that which you took from the invoices in the preparation of these charts? [3777]

A. I received the total over-all percentages of various types of scratcher sales.

Q. Was a chart made up from that information?

A. Yes; a chart was prepared but it is being photostated now.

Q. You do not have that at the present time?

A. No, sir. [3778]

* * *

JESSE E. HALL, SR.

a plaintiff herein, called by the plaintiff as a witness on rebuttal, having been previously sworn, was examined and testified as follows:

The Court: You have heretofore been sworn, have you not, Mr. Hall?

The Witness: Yes, sir.

The Court: And testified, and you are now recalled on rebuttal. [3782]

Proceed.

Direct Examination

By Mr. Scofield:

Q. Did you hear Mr. Wright's testimony when he was on the stand? A. I did.

Q. I would like to know, Mr. Hall, when you first put abrading elements on the outside of a casting to condition an oil well for cementing?

A. In 1935. [3783]

Q. (By Mr. Scofield): Where was this work done, Mr. Hall?

A. Near Bakersfield, California, in what is known as the Weed Patch oil field.

Q. Do you know the name of the well?

A. Yes, Bristol No. 1.

Q. Who was drilling the well?

A. The Mountain View Oil Company, which I was a member of.

Q. Who had direct charge of the drilling operations? A. I did.

Q. When was this? A. 1935.

Q. How long did it take to drill the well?

(Testimony of Jesse E. Hall, Sr.)

A. Oh, we drilled on that well over a year, but I don't really recall the exact dates. They are of record in testimony.

Q. I put before you Exhibit 270, and ask you if you can identify that and state what it is?

A. Yes. That is a map of a section of Kern County. There are the Mountain View and Edison oil fields, which include the Weed Patch district.

Q. Is the well that you have referred to, this Garner-Bristol well, noted on that map in any fashion? A. Yes. [3784]

Mr. L. E. Lyon: The map is the best evidence, your Honor.

The Witness: There is the circle.

Mr. Scofield: I did not know whether you would be able to see the notation, your Honor.

The Court: Very well. He may explain it. Objection overruled.

The Witness: There is a circle A and B, marked A and B, and at the time that I started to drill the well, when I spudded in at the first location, was the time Harold Ickes, in making a conservation for drilling, set a different ruling, and we had to skid the derrick and move deeper into the lease, and that would be B.

Q. (By Mr. Scofield): Did you obtain any record of the drilling of this well from any source?

A. Yes. I obtained the records that were filed at the Bureau of Mines, Kern, in Bakersfield.

Mr. L. E. Lyon: Your Honor, if a part of this record is going to be used, which Mr. Scofield has

(Testimony of Jesse E. Hall, Sr.)

just handed to me, we demand and request the entire record of the Division of Oil and Gas be produced and offered in evidence, and not a part and parcel of that record.

The Court: What is the exhibit?

Mr. Scofield: Exhibit No. 271, your Honor.

Q. I put that before the witness and ask him to identify [3785] it.

A. This is a written record and a proposal to the Division of Oil and Gas, dated August 26, 1935.

Q. Who obtained that record? A. I did.

Q. From whom?

A. From the Division of Oil and Gas, in Bakersfield.

Q. When?

A. Well, I recall something like two or three years ago.

Q. Is that all that you obtained from the Division of Oil and Gas at that time?

A. This is all I obtained and all they had.

Q. What type of tool did you use on this well, the Garner-Bristol, in 1935, Mr. Hall?

A. On the 10-inch casing, I used the regular centralizer, straight centralizer, and I had taken and cut out the inside of the collars and bored holes in them and taken cable and cut it up and made bristles and put them in those holes, and, as I recall, there were two of those centralizers and scratchers, combined scratchers and centralizers, run on the surface casing.

Q. What do you mean by "the surface casing"?

A. That is the first string of casing set, to con-

(Testimony of Jesse E. Hall, Sr.)

trol head surface water and one thing and another, like cave-ins. That is required by the water district, by the Bureau of Mines, [3786] to set.

Then I ran a string of $5\frac{3}{4}$ pipe down somewhere near 5,000 feet, possibly 5,100, with six scratchers on them, manufactured by a machine shop in Bakersfield known as Chris Nelson. Those scratchers were made somewhere in the period of time in July, in June or July, 1935. They were brought out on the well.

We had a fishing job. We were ready to set the $5\frac{3}{4}$ pipe to bottom, and on the last trip in we stuck a core barrel, twisted the pipe off, and we had the pipe for a month or more, for a long period of time, laid on the lease, out on the rack, and I had all the paraphernalia ready to run on that, and these scratchers remained there on the lease, piled out near the casing, and for some period of two months or more.

Q. Who made the scratchers that were put on the water string?

A. Chris Nelson, a man running a machine shop in Bakersfield.

Q. And who made the scratchers that were put on the oil string?

A. No. You are getting the "oil string" and the "water string"—the surface string. I made the ones that went on the surface string, together with a welding shop that was on the near corner there, Western Welding Shop. [3787]

The water string, that is, the long string, the $5\frac{3}{4}$ was manufactured by Chris Nelson.

(Testimony of Jesse E. Hall, Sr.)

And then we did not get that pipe to bottom, and my proposal here is to set it off of bottom on account of we had some small drill pipe that was stuck in the hole, after fishing for quite a while, and then we set that $5\frac{3}{4}$ pipe around 5,000 feet and cemented it, and then we went in and proposed here to run a string of 4-inch onto bottom, which we would call the combination string, and that combination string had a Baker basket, a Baker casing shoe, a cast iron baffle plate, manufactured by Baker Oil Tool, and I had two small centralizers together with scratchers and bristles on them. The collars of those were developed at Hall Machine Shop at an earlier date. They were run in the hole and cemented likewise.

And that I believe was the sequence of the running of the scratchers.

And at an earlier date, either before '35 or in the first part of the year '35, before I had any of the hole ready, I got the idea of building a scratcher and I went to the Hall Machine Shop through one of their representatives which carried me there, to see if they would do some experimenting work for me, and they took on the job and there were quite a few attempts to make a scratcher. We finally wound up with two scratchers and quite a few collars left over, [3788] and they were all of the same size of this pipe that was set in Bristol No. 1. That pipe was finally set, and the size of it was $3\frac{1}{2}$ O.D. instead of $4\frac{1}{2}$, 4-inch pipe, as the chart calls for there.

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: I should like at this time to have the permission to open the deposition of Mr. Chris Nelson that has been filed in court.

The Court: Has it been marked as an exhibit?

Mr. Scofield: Yes, sir, it has been marked as an exhibit.

The Court: What exhibit?

Mr. Scofield: 272. [3789]

* * *

Q. I put before you two photographs which have been marked for identification as Exhibits 272-B and 272-C. Can you identify those? A. I can.

Q. What are they?

A. One of them is of a scratcher, a photograph of the type of scratcher that Chris Nelson manufactured and was run on the 5 $\frac{3}{4}$ pipe, and that is Exhibit 272-B.

Exhibit 272-C is an inside photograph showing how the bristles are fastened on the inside of the collar.

Q. You also have before you a physical exhibit, Exhibit 272-A. State what that is.

A. Exhibit 272-A is the physical specimen of Exhibit 272-B.

Q. Do you know who made that?

A. Chris Nelson.

Q. At whose request?

A. At my son George's, who is deceased now.

Q. When was it made?

A. I haven't the slightest recollection as to when

(Testimony of Jesse E. Hall, Sr.)

it [3791] was made, only it was several years ago, and it was made prior to the taking of the Chris Nelson deposition.

Q. The Chris Nelson deposition was taken June 14, 1951. Was this Exhibit 272-A made before or subsequent to the taking of that deposition?

A. It was present at the taking of the deposition, so it was made prior.

Q. Now, what is this Exhibit 272-A, that is, what relationship does it bear to your Garner-Bristol well, if any?

A. It is the type of scratcher that I had Chris Nelson to make, to remove the wall cake off the bore of the well.

Q. How many of those were made?

A. Six.

Q. Did you run them in the well?

A. I did.

Q. When?

A. It was in the summer of 1935, when the string of casing was run. They were run in the well and cemented.

Q. On what casing string were they run?

A. Upon what we call the water string.

Q. How many of them were used? A. Six.

Q. Were they left in the well?

A. They were. [3792]

Q. I put before you Exhibit 47, to which is attached an envelope marked "Exhibit 47-A." Can you identify that and tell me what it is?

A. Exhibit 47-A is an invoice—

(Testimony of Jesse E. Hall, Sr.)

Q. Is that "47" or "47-A" you are referring to?

A. 47 is an invoice from the Hall Machine and Tool Works, 2020 Union Avenue, Bakersfield, California, to Hall and Son—my son involved here would be George Hall—1861 Quincy Street in the city. It says, "2 per cent 10 days."

Q. Can you identify the item that is covered by the invoice?

A. It is in the invoice. I can. It is, "Make model of cement guide." That model is the model that was made of a scratcher and a centralizer, and I believe there were some letters, as I recall, of a lot of correspondence back and forth to Samuel H. Robinson, attorney on this. It is still now a scratcher and combined centralizer of the small size. This is the same batch of equipment that was made, that I was speaking of a while ago, that I got the collars from.

Q. When was that combination scratcher and centralizer made?

A. It was made near about this date. I rather think it must have been made before—I wouldn't think it was [3793] built before, it was built possibly after, that I don't know, but it was all about this time, May 6, 1935.

Q. Were you at that time drilling this Garner-Bristol well? A. I was.

Q. Why did you make up a device of that character?

A. I didn't make this device up of this character

(Testimony of Jesse E. Hall, Sr.)

here to run in the well because it was too small. I was thinking of it in the form of a model to secure an application—for an application to be prepared on it for filing for a patent.

Q. How was the scratcher combined with the centralizer in that model device?

A. It was made—the scratcher bristles were made and put in the collar, in one of the collars of the centralizer, as each centralizer has two collars on it.

Q. Was the structure on the centralizer the same or something different than Exhibit 278-A which you have before you?

A. I would say the structure of fastening was very much different. This structure was demonstrated at a later date as being an easier way to do it. I wasn't satisfied with the way this structure here put them on. But, this other structure, as I recall it—it has been so long ago—the bristles were fastened in kind of a hairpin form, they [3794] were pushed through, a wire in a recess, turned on the inside, and the wire threaded in through that. I have made some of that nature and that is what strikes me at this time. I haven't seen how this was put together in several years, but I am of the opinion that it was threaded together with a wire, but there were holes bored in the collar and wickers put in them. I am not clear just at this moment how they were fastened. [3795]

Q. In one of your previous answers you referred to letters of Samuel L. Robinson. I put before you

(Testimony of Jesse E. Hall, Sr.)

two letters, one identified as Exhibit 48, to which is attached an envelope marked 48-A for identification; a second letter, dated May 8, 1935, marked Exhibit 49 for identification, to which is clipped an envelope marked Exhibit 49-A for identification. Explain, if you will, or identify, if you will, the Exhibit 48 which you have?

A. Exhibit 48 is a letter that Mr. Samuel Robinson is writing me and discussing the proposal of getting William Maxwell to show him this to get him to file an application on this cement equalizer, "together with your improvement to operate to scrape and clean the bore of a well."

Q. Who was Samuel Robinson?

A. Samuel Robinson was a lawyer which I used for several years, which is now deceased. He was a partner with Joe Burke and Mark Herron, or worked out of the office there. I don't know what partnership they had—at 756 South Broadway.

Q. Here in Los Angeles?

A. In the Chapman Building, Los Angeles, California.

Q. Was he representing you?

A. Yes, he represented me in many, many cases.

Q. What did he have to do with this model?

A. As I was fully occupied in time and had no time [3796] to run back and forth to Los Angeles, he frequently came up to see me on different things. He was to bring the model back down to show it to Mr. Maxwell.

Q. Did he have any interest at all with you in

(Testimony of Jesse E. Hall, Sr.)

this model; that is, did he take any part in the payment for the service of preparing the model or anything of that sort?

A. No. I had often told him wherever he could find a manufacturer—I was kind of doing a lot of inventing along at that time—that I would give him a percentage of any contract that I might get, a license agreement, upon anyone that might do the manufacturing. From that standpoint he was interested. I had some other pumps and what not that he had done quite a bit of work in lining up.

Q. I would like to have you identify the model. Was it the model that consisted of the centralizer and the scratcher combined together, or was it some device such as you have you have before you which is Exhibit 272-A?

A. It was a scratcher and a centralizer combined together. [3797]

* * *

Q. (By Mr. Scofield): I put before you Exhibits 49 and 49-A and ask you to identify that letter if you can.

The Court: What exhibits did you call those?

Mr. Scofield: 49 and 49-A, your Honor.

A. 49 is a letter from Mr. Samuel Robinson, May 8, 1935.

* * *

A. Where Mr. Robinson had come to Bakersfield and the Mountain View oil well, and I apparently was gone when he was there. And he says he waited as long as he could and would return at another

(Testimony of Jesse E. Hall, Sr.)

time, which would be Sunday afternoon, "and I will pick up the model at that time."

Q. What was actually done with this model at that time, do you recall?

A. No. The model, when it was made, that went to Los Angeles was first sent to be chromed. It was brought to Los [3798] Angeles and chromed, and then I carried it, myself, to the office of Samuel Robinson.

Q. Who brought it to Los Angeles?

A. I did.

Q. How soon after this correspondence passed between you and Mr. Robinson was the model brought to Los Angeles?

A. Very shortly. I don't recall the amount of days, but it was a very short period.

Q. Why did you have the model chromed?

A. Because it was a rough nature and bringing it into offices where gentlemen were working, and one thing and another, where they would be handling and looking at it, I wanted it to look as nice as possible.

Q. What do you mean by chromed? Do you mean chrome-plated? A. Chrome-plated.

Q. What was done after the model was chromed?

A. It was taken to William Maxwell's office.

Q. What did you do with it there?

A. Mr. Robinson and I went to call on Mr. Maxwell and we discussed it.

Q. What was the discussion with regard to this model?

(Testimony of Jesse E. Hall, Sr.)

A. The discussion was of filing an application on it and what it would cost. And at that time there was a matter, William Maxwell stated that he had somebody who [3799] would like to manufacture such a thing, wanted to know what kind of proposition, and I made he, Mark Herron, Samuel Robinson, and myself in the deal. I made them a proposition, and that proposition I recall two other meetings with them that I came back after that, sent and got a lot of articles.

Q. What year was this? A. 1935.

Q. All of these meetings in 1935. Did anybody else besides these three gentlemen, Messrs. Maxwell, Herron, and Robinson, see this model?

A. Yes. There was another attorney in Mr. Maxwell's office, I recall now, as Bob Maxwell. I haven't seen him or heard of him since that date.

Q. Anybody else?

A. That is all that I know of.

Q. Did Clay Miller ever see the model?

A. Oh, Clay Miller has seen the model—

* * *

A. But Clay Miller saw the model, and while they were building it I carried him over to the Home Machine Shop to look it over. We were in quite a bind as to how to put the bristles in and he was quite a builder, himself. I carried him over to see if he had any idea how to put the bristles in. [3800]

Q. (By Mr. Scofield): Did you ever file an application for patent on this particular model?

(Testimony of Jesse E. Hall, Sr.)

A. I did not.

Q. What did you do next after this model was made and you discussed it with these gentlemen?

A. There was the prior art was got on that, and I recall some patent, the Shaw patent of 1904, Arnold patent of way back before the turn of the century on a centralizer. The Shaw was on the scratcher. And then there was a lot of work done, two patents, I believe, by a fellow by the name of Brashear (Bushara). And we decided that, generically, everything that was shown in our patent and we could claim for the elements were found either in Shaw or Bushara, either one.

Mr. L. E. Lyon: Your Honor, I will move to strike the statement of this witness with respect to the disclosure of any patent, as not the best evidence. The patents themselves are the best evidence.

The Court: It is not offered for that, as I understand it.

Mr. Scofield: No, sir.

The Court: Merely to show his reasons for doing what he did.

Mr. Scofield: Yes. [3801]

* * *

The Court: Had you finished your answer?

The Witness: No. No, sir, your Honor.

The Court: Complete it.

A. At that time Mr. Maxwell, Mr. Robinson and I discussed that the elements in Brashear and the Shaw patents, if there were anything that we got

(Testimony of Jesse E. Hall, Sr.)

a patent on, it would be some little novel feature with itself, and the patent would be so slim—Maxwell called it “the art had been perforated to the degree that there would be nothing left to afford the money to file the application.”

Q. (By Mr. Scofield): Who obtained these prior art patents for you?

A. Mr. Maxwell or Sam Robinson, one. It was done through the session, I think there was a search made. [3802]

* * *

Q. (By Mr. Scofield): You referred to two patents in your testimony, one issued to Bushara and one to Shaw.

May I have 268 and 269?

A. Two to Bushara.

Q. Two patents to Bushara. I put before you Exhibit 269 marked for identification—268 marked for identification and will ask you if you can identify in this folder of patents the patents you have referred to? I will call your attention to the fact that the index in the front of that folder gives each patent an identifying number.

Mr. L. E. Lyon: Your Honor, I object to that if there is any attempt to produce any evidence as to the disclosures of these patents other than what somebody might have told him back at some time, for the patents were not pleaded prior to the commencement of this trial as required in Section 282 and all subsections of the Patent Act of 1952.

Mr. Scofield: The patents have been properly

(Testimony of Jesse E. Hall, Sr.)

pleaded, your Honor, and it will be shown that the 30-day period—that they were pleaded within the time of the 30-day period. [3803]

* * *

Q. (By Mr. Scofield): What were you selling at this time or were you selling an abrading instrument for conditioning wells at this time?

* * *

A. I was selling the Cosco well bore cleaning spiral centralizer. [3807]

The Court: Is that exemplified here by any exhibit?

Mr. Scofield: Yes.

Q. Do you have any record of any of the sales of this Cosco centralizer, as you call it?

A. I do.

The Court: At what time?

A. In 1937 to in 1939. [3808]

* * *

Q. (By Mr. Scofield): Did you make these sales?

The Court: Is it a true and correct list of them?

The Witness: It was never disputed.

The Court: You made the sales, didn't you?

The Witness: I made the sales. So far as I know, it is absolutely correct. [3812]

* * *

Q. (By Mr. Scofield): Why are your scratchers, Mr. Hall—and by "your scratcher" I mean

(Testimony of Jesse E. Hall, Sr.)

the Weatherford scratcher—why are they mounted rotatively on the casing?

A. To give relief to the fingers as they pass, swing down by the collar so that the collar can turn and give relief and the spring finger not bend it up.

Q. You mean by "relief" to relieve the stress?

A. Relieve the stress or the distance of the length of the fingers that is caught in the angle that is turning in.

* * *

The Court: Mr. Scofield, I do not want to interrupt you, but have we not been all over that before? Did not Mr. Hall tell us once how the rotating of the scratcher on the casing as the casing was lowered or raised in the well, the rotation prevented the bending or breaking of those wires or whiskers?

Mr. Scofield: This is in rebuttal, your Honor, to the [3825] testimony of Mr. Doble.

The Court: Is there any issue as to desirability?

Mr. Scofield: Well, there is an issue why these scratcher wires, these scratchers themselves, are mounted rotatively on the test.

The Court: Mr. Hall has previously told us in his previous statement that it is desirable to have the scratcher rotate on the casing so that those whiskers or wires will keep the collar from becoming bent or fouled up as the casing is raised or lowered in the well.

Mr. Scofield: Perhaps it would be sufficient for me to ask Mr. Hall, if the reason for mounting the scratcher rotatively on the casing is to increase the

(Testimony of Jesse E. Hall, Sr.)

area over which the scratchers operate upon reciprocation?

Mr. L. E. Lyon: That is objected to, your Honor, as fully covered by this witness. It is not rebuttal, because actually we were second in telling what the effect was and not first.

The Court: I do not see that there is any issue between you on that. Mr. Doble didn't express an opinion that the scratcher would survive the operations as to the well, he did express the opinion, as I understood him, that it would scratch just as well if it were welded on the casing and the casing were rotated as it would if the scratcher were rotating on the casing. I do not understand that there is any [3826] issue between the parties as to the effect or as to the desirability, relative desirability, of a rotating scratcher, is there?

Mr. Scofield: Not that, your Honor, but they are representing here, Mr. Doble in his testimony throughout, represented that the reason for rotatively mounting the scratcher upon the pipe was to obtain a greater area scratched or a pattern upon the interior or upon the inside of the well bored.

Now what I am attempting to do by Mr. Hall, is to give testimony in this case to show that that is not the intention of the rotative mounting on the scratcher at all, that there is no purpose whatever of increasing the area scratched, but it is to relieve these wires when they double back or are reciprocated.

The Court: Mr. Scofield, all you are saying is

(Testimony of Jesse E. Hall, Sr.)

that maybe Mr. Doble's reasons, that is, his No. 1 reason, that the fingers or the wires will find more area to scratch in the rotation, that your position is that the No. 1 reason is to, in effect, preserve the effectiveness of the scratcher wires as the casing is raised or lowered in the well.

Now I take it that you would not dispute Mr. Doble's statement of another reason, namely, that by rotating as the casing is raised or lowered the scratcher will probably scratch a greater surface than it would if it were welded to [3827] the casing.

Mr. Scofield: No, sir, we don't dispute that, but we don't want Mr. Doble to get on the stand and interpret the Hall applications as he did.

The Court: Just because he states one reason is the No. 1 reason, does not mean that there might not be other reasons.

Mr. Scofield: That is true. That is perfectly true.

The Court: At the present moment I am convinced that both reasons are valid for rotating it on the casing unless you gentlemen argue me out of that view. I have that present view that both reasons mentioned are rendered desirable, that that collar rotates on the casing if it is able to do so.

Mr. Scofield: That is correct, but I think that the plaintiff, your Honor, is entitled to have evidence in the case as to the primary purpose of mounting these rotatively. [3828]

(Testimony of Jesse E. Hall, Sr.)

A. I identify 277-A, as a letter I written Mr. William Maxwell requesting——

The Court: No, you do not need to tell what the letter is about. Just give us the date of it.

* * *

The Court: That is, Exhibits 277-A, -B, and -C, comprise the letter and the enclosures, do they?

The Witness: Yes, sir, and the answer.

The Court: And Exhibit 277-C is Mr. Maxwell's answer?

The Witness: That is correct.

The Court: All right. What is the purpose? Do you offer them?

Mr. Scofield: I want to merely identify the sketch as the sketch of the model to which he testified previously, that is, this model that was chromed and was sent here to [3841] Bakersfield. I want him to identify that, or if he can or not; that is. I want to know whether that is the model that was made there in Bakersfield and sent down here in 1935.

The Court: The question, then, "is Exhibit 277-B for identification intended to be a sketch of the chromed model concerning which he has previously testified?"

Mr. Scofield: That is correct.

* * *

The Court: What is the purpose of the offer?

Mr. Scofield: To establish, your Honor, that at the time the interference was declared with Mr. Wright and in [3842] attempting to establish the

(Testimony of Jesse E. Hall, Sr.)

dates of his invention of the scratcher, he wrote to Mr. Maxwell, inquiring as to the whereabouts of the model which had been made in Bakersfield in 1935. [3843]

* * *

Mr. Scofield: I will ask that the clerk mark the can as Exhibit 283-A for identification; the cylindrical member which simulates the casing, as Exhibit 283-B for identification; and the Weatherford scratcher which is mounted on the 283-B as 283-C for identification.

* * *

Q. (By Mr. Scofield): Briefly explain to the court how this demonstrator is used, Mr. [3845] Hall?

* * *

A. I will try. The purpose is to show a simulated well with various conditions in a well bore, and when a scratcher is reciprocated in and out of it, that admits a [3846] maximum and a minimum diameter, together with obstructions which is in well bores. In other words, the varying conditions, some of the varying conditions that are found in a well bore.

The Court: Is it an attempt to simulate the most adverse conditions which might be encountered in the hole; is that it?

The Witness: That is correct.

Q. (By Mr. Scofield): Is the reciprocation performed manually?

A. Yes. I will say this: it has nothing to do with

(Testimony of Jesse E. Hall, Sr.)

circulation. Those conditions that might apply to a scratcher or any of the tools is not shown in this here. It only shows the manual function of it as it is reciprocated.

Q. Why did you make the scratcher wires so much larger than the cylinder?

* * *

A. Because the knowledge of well bores varying in different diameters, much larger than the diameter of the wells drilled, and the reason of making it smaller is because the well grows in well bores. That is well recognized. And by putting the obstructions in there so that the tool has to operate when it passes by them, and those obstructions are [3847] similar functions to obstructions that are well recognized in well bores. And the size of that, comparable to the size of the scratcher that runs into it, is similar to all of the sizes that are common in the drill diameters. [3848]

* * *

Q. (By Mr. Scofield): I would like to have you make a demonstration of the use of the Hall or the Weatherford type scratcher in this demonstration can, Mr. Hall, and after that make a demonstration of one of the Nu-Coil type scratcher and finally a demonstration of the scratcher of the wall cleaning guide, if you will? [3862]

* * *

The Witness: Starting this out, the bristles overall measure 13 inches

(Testimony of Jesse E. Hall, Sr.)

Now pushing it down (demonstrating), pushing it entirely to the bottom, to the smallest diameter that the collar will absolutely go into and the diameter gets so small that the collar won't come on through (demonstrating), and pulling it up. I pulled the handle off of that.

Pulling it up with your hand now (demonstrating), showing you how easy it will reverse.

I will have to put this nut back on to show you the rotating part of it.

Now pushing it in again with this directly over the stirrup (demonstrating), and working it up and down like this (demonstrating), that is six revolutions and here it is back around again. [3865]

What that demonstrates, where the well bore is obstructed and it pushes those bristles all down there and they all fulcrum up and down. (Demonstrating.) The rotating part is not the object of the thing, that is one of the natural phenomena that come in. The tests show how the bristles that pass by, and not have to describe an arc and reverse in a cylinder, as an ordinary brush is pushed, for illustration, when you reverse the handle you have to raise it and where a cylinder has a wall on each side you can't use an arcuate finger sticking straight out. It just won't work.

All of the other, of the sidewise bristles, including the Multiflex and every one of the sidewise bristles over there will function the same way as I have demonstrated on this.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: I would like to call the court's attention to the fact that the wires in this particular exhibit, 273-C, I believe, which has just been demonstrated, are some of them permanently deformed by the demonstration. That means that they have been bent beyond the point of their elastic limit. [3866]

* * *

Mr. Scofield: Can it be stipulated that the Nu-Coil scratcher, Exhibit 72, would operate in the same manner in the demonstrating can?

* * *

The Court: The question is to stipulate for the purpose of this case that the results of the test would be the same if the Nu-Coil scratcher, such as Exhibit 72, were employed.

Mr. L. E. Lyon: They would be substantially the same with deformation of the wire and rotation of the scratcher.

The Court: Without commenting on the result, would the result be substantially the same?

Mr. L. E. Lyon: Yes, substantially the [3867] same.

* * *

Q. Now will you demonstrate the Nu-Coil?

The Court: Do you have a stipulation as to the Nu-Coil? [3868]

Mr. Scofield: No, the wall cleaning guide.

The Court: Perhaps we can get a stipulation as to that.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: I will stipulate that if an attempt is made to run the wall cleaning guide in there that Mr. Hall will hook a wire over one of those flanges on the inside and deform the wire.

Mr. Scofield: Will you stipulate that it will stick in the can?

Mr. L. E. Lyon: I will stipulate that he will hook some wires over the internal flange on the inside and stand for the proposition that it won't be removable on his demonstration. [3869]

* * *

The Witness: I would like to give the diameter of this over-all to start with.

The Court: Of the test just completed?

The Witness: Yes.

It is 13 inches over-all of the bristles.

Q. (By Mr. Scofield): That is the over-all diameter of the scratcher, Exhibit 283-C?

A. Yes. The top of the can was 11 inches.

The smallest diameter that the scratcher reversed in was $6\frac{3}{4}$ inches.

The outside diameter of the scratcher—now these are approximately, within an eighth of an inch or that close, which is ordinarily what you use in gauging this kind of stuff—the outside diameter of the collar—

Q. That is, the collar of the scratcher, 283-B?

A. Yes—is $6\frac{1}{4}$ inches, and that is a standard diameter. [3870]

In other words, it is 13 inches down to $6\frac{3}{4}$ inches,

(Testimony of Jesse E. Hall, Sr.)

which is the flexibility, and that distance is needed in completing oil well jobs.

The Court: Now you were asked to perform the test with the wall cleaning guide, Exhibit?

Mr. Scofield: 283-D.

The Witness: (Demonstrating.)

Mr. L. E. Lyon: I notice the wall cleaning guide won't go on the cylinder without being forced on.

The Witness: Well, the cylinder is just a piece of tin and all it does is simulate the well pipe.

I can leave the cylinder out and push it in with my hand.

The Court: Do you not think some of these younger men can do that?

The Witness: Anyone who wants to push it in, they can have the privilege.

* * *

The Witness: It is placed in this way and I can push it in (demonstrating). The only trouble there, it turned over sideways, but there is no way of pulling it out without cutting the bristles or taking a pair of pliers and bending them because they are radial and stick up. [3871]

* * *

Mr. L. E. Lyon: It can't be reversed, your Honor, or pulled out? I just pulled it out.

The Witness: Now I will push it back in because it was sideways.

Now it is only pushed a short ways and you may pull it out now.

(Testimony of Jesse E. Hall, Sr.)

The Court: You are going to challenge Mr. Lyon, now?

The Witness: Yes, if he can pull it out straight. There is only one way to pull it out and that is to turn it over.

(Mr. Lyon making demonstration.)

The Witness: You can turn it sideways and pull it out, but not pull it straight up. [3872]

* * *

Cross-Examination

By Mr. L. E. Lyon:

Q. Mr. Hall, is the device, Exhibits 283-A, 283-B and 283-C a device that you sent to Mr. Scofield or delivered to Mr. Scofield in June of 1945, as shown by the letters here in evidence?

A. I don't believe so. I think this is more of a recent make of a device. It was possibly something similar.

Q. What do you mean by "recent make"?

A. Well, I have made several different types. They have been made in several different tin shops that had different stirrups on them. Some had more flanges put in and weren't rolled in.

Q. And you placed these devices that you had like Exhibit 283-A, and -B, in the hands of the salesmen of the Weatherford Spring Company, didn't you? A. That is correct.

Q. And the salesmen of the Weatherford Spring

(Testimony of Jesse E. Hall, Sr.)

Company took those around in the field to demonstrate to the customers of B and W, the operation of the wall cleaning guide, did they not?

A. Well, they demonstrate to the customers, whoever [3873] they might be.

Q. You started that demonstration, according to the testimony here, first with an attempted demonstration to Mr. Jones, while he was still at the Union Oil Company, did you not?

A. I believe my son demonstrated to Mr. Jones of the Union Oil Company.

Q. And that was in 1941, was it not?

A. I don't recall the exact date, but it was an early date.

Q. It was before the Weatherford Spring Company was manufacturing scratchers at Weatherford, Texas, wasn't it? A. I couldn't say.

Q. You have no idea?

A. I would rather think it was after.

Q. How much after?

A. I don't know, Mr. Lyon. I don't recall of having other than one dummy test tool before they started manufacturing because I used one in my laboratory.

Q. Now how many more customers of B and W have you called on in the last year referring to the matter of this litigation than the Pure Oil Company, Bethlehem Supply Company, The Texas Company, and the Gulf Oil Company, to which reference you made in your testimony this morning on direct examination? [3874]

(Testimony of Jesse E. Hall, Sr.)

A. I called on two companies in Shreveport, Louisiana.

Q. Who are they?

A. One of them is A. J. Trayhan.

Q. Who else? A. Louisiana Natural Gas.

Q. Who else? A. I think that is all.

Q. Did you in calling upon any of these customers—

A. The Woodston Oil Company of Fort Worth is another.

Q. In calling on any of these names which were known to you to be customers of B and W and discussing the elements of this case with them, did you supply such customers with a copy of the injunction of January 25, 1952, before you entered into a conversation or at any time during that conversation?

A. Yes, I supplied them all with them.

Q. At the time of that conversation?

A. No.

Q. Did you discuss and disclose fully to them at the time of these conversations which you have had and which have been in the last six or eight months as required by that injunction present all of the issues of this case and what was completely involved in it as required by the injunction of January 25, 1952?

A. At the first call I did not discuss matters of [3875] this case. I only asked them if they were obstructed in buying B and W equipment. I was very positive and told them that I did not care to

(Testimony of Jesse E. Hall, Sr.)

discuss the case, all I wanted to know was if they were obstructed and how they were obstructed, and the reason of that I would like to explain, simply because you testified and I heard your statement, say that the supply stores which you lost, when you lost a supply store it was a total loss to B and W, and you had no way of recovering who the business was from, and I happened to know that the Bethlehem Supply Company was selling the Pure Oil Company, and that is why I started out on that mission.

Q. Now you had sent out by Mr. Ekey and two or three salesmen of the Weatherford Spring Oil Tool Company, wires to all of the salesmen to contact the customers of B and W and one such set I have had identified in evidence and demanded the rest of the correspondence.

May I have that, Mr. Scofield?

Mr. Scofield: If I have it here, you can have it.

Mr. L. E. Lyon: May I have Exhibits EJ-1 and EJ-2?

(The exhibits referred to were passed to counsel.)

The Court: Did you say EJ-1?

Mr. L. E. Lyon: FJ-1 and FJ-2, your Honor. I read it wrong.

(The exhibits referred to were passed to counsel.)

Mr. L. E. Lyon: In that regard, your Honor, I will [3876] offer in evidence at this time Exhibits FJ-1 and FJ-2 and ask if it can be stipulated—

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: I carried those back and forth for a number of days. I don't seem to have them at the present.

The Court: You are speaking of Exhibits FJ-1 and FJ-2?

Mr. L. E. Lyon: Yes, your Honor. I am asking for a stipulation with respect to those, if those are genuine and state the facts correctly as they know them, and if it is a copy of a portion of the correspondence which I have demanded from them and which they now say they are not able to [3877] produce.

Mr. Scofield: FJ-1 is a copy of a letter that was sent to B & W by Shell Oil Company, and to it is attached FJ-2, which is a copy that was sent to Weatherford Oil Company.

The Court: Received in evidence, FJ-1 and FJ-2 for identification.

(The documents referred to, and marked Defendants' Exhibits FJ-1 and -2, were received in evidence.)

Q. (By Mr. L. E. Lyon): Who is Mr. John W. Hickey?

A. Mr. Hickey is the engineer for the Weatherford Oil Tool.

Q. Was Mr. Hickey, to your knowledge, going out through the trade and making inquiries like that referred to in Exhibit FJ-2, on all of the customers of B & W, at the time of that letter, FJ-2?

(Testimony of Jesse E. Hall, Sr.)

A. I don't know what Mr. Hickey's calls were, because I don't believe he did.

Q. Do you know how many companies he called on? A. No, I do not. [3878]

* * *

Q. (By Mr. L. E. Lyon): Mr. Hall, you have testified concerning a well in the Mountain View oil field, Kern County, Garner Bristol #1, that you drilled or what you state that you had some capacity with reference to; and you have produced Exhibit 271, and I believe it is your testimony that [3881] Exhibit 271 constituted all of the file of the Division of Oil and Gas at Bakersfield, California, on that well; is that correct?

A. I asked them for all of the file and I went there and they said they would photostat it. We looked with a woman and we found what we wanted, the pipe that was run. I don't know whether there is any more file or not.

Q. You testified on direct examination that this was the only paper that was found; isn't that correct? Are you changing that testimony now?

A. Well, I didn't go through all of the files that they had there. I told them what I wanted. I wanted to find out the size of the pipe and when it was run in the hole.

Q. That file was open to you for your personal inspection as the person who was entitled to receive and inspect that file, was it not?

A. I remember that paper was brought to me, up to the—

(Testimony of Jesse E. Hall, Sr.)

Q. Just answer the question, please.

A. I suppose if I had asked for the file, I could have got the file. I don't know.

Q. And how did you identify this particular page in the file without getting the file, Mr. Hall?

A. I discussed with the man in charge there. I told him I wanted to find out the pipe and when it was run and the pipe sizes when the well was completed, and I wanted it [3882] photostated and he said he would have it done for me. And I went back there about two hours later or three and it was given to me.

Q. As a matter of fact you know that there was a large file, a number of papers on this well at the Bakersfield office of the Division of Oil and Gas, don't you?

A. Oh, I know there was files of when they spudded in and different things like that I don't recall, but not concerning the pipe running.

Q. And while that well was being tested in accordance with the Division of Oil and Gas, there are periodic tests made of the progress of the well and those tests are in writing and a copy of the test reports were sent to you, weren't they?

A. They were sent to the secretary of the company. I don't believe they were sent to me.

Q. And they were sent in the same way that this particular report was sent, addressed to "J. E. Hall," and that is you, isn't it?

A. That is correct.

(Testimony of Jesse E. Hall, Sr.)

Q. And in fact that was your home address, was it not?

A. That is correct. My son's address, rather.

Q. And you were staying there, too, weren't you?

A. Well, I was living in the rear at that time, part of the time. [3883]

Q. Now, this particular paper that I have presented to you, you know is data that is gathered in the form of a proposal; isn't that correct?

A. That is right, proposal.

Q. And that proposal is what you told the agent of the Division of Oil and Gas, what the condition of the well was and what you proposed to do from there on, isn't it?

A. I don't believe so. I think what this proposal is, is a copy of the well, the pipe conditions up to the date of the proposal, then plus what the proposal is from then on. That is my understanding of it.

Q. This states at the bottom of Exhibit 271: "The proposal is approved, provided that," doesn't it; and those are the three words right here after "decision," aren't they? A. That is correct.

Q. And that proposal is what you had told, you, personally, had told the agent of the Division of Oil and Gas that you intended to do, wasn't it?

A. That is correct. [3884]

* * *

Q. (By Mr. L. E. Lyon): In this proposal, in this statement of condition of well, you had reported to the Division of Oil and Gas that there was a 10-

(Testimony of Jesse E. Hall, Sr.)

inch casing that extended 840 feet into the well; that is true, isn't it?

A. That is my best knowledge now. I don't remember the 10-inch casing.

Q. And that is what you reported and the record shows that you reported to the Division of Oil and Gas; isn't that correct?

A. That is the record.

Q. And the Division of Oil and Gas could have gotten that 10-inch size from nowhere else other than from you, could it?

A. Well, they come out on the rig and get the report. They could have got it from the driller that run the pipe, or they could have taken it from the log. They generally take that stuff from the log of the driller's log.

Q. And the size of casing referred to as 10-inch casing really means 10 $\frac{3}{4}$ -inch casing, does it not; that is oil field practice? [3885]

A. I don't know in this case. I recall buying this casing, second-hand casing, and there is a 10-inch size. I wouldn't quibble over whether it was 10 or 10 $\frac{3}{4}$.

Q. As a matter of fact it was used, as you reported that fact, you having purchased the casing, to the Division of Oil and Gas, wasn't it?

A. That is right.

Q. On Exhibit 271 it says: "We propose to cement 5 $\frac{3}{4}$ -inch casing at 5100 feet to protect the hole." And I am reading from your stated proposals on Exhibit 271. Now, did you ever cement the 5 $\frac{3}{4}$ -inch casing at 5100 feet?

(Testimony of Jesse E. Hall, Sr.)

A. I don't know whether it was 5100 or 5000. It was in about that.

Q. Did you ever cement the 5 $\frac{3}{4}$ -inch casing at all? A. Yes, sir.

Q. The decision of that proposal is that there would be—that is stated in item No. 3 under the "decision"—"the 5 $\frac{3}{4}$ -inch casing is cemented in a bore of shale suitable for obtaining a water shut-off," and requiring in item B a test of that water shut-off. Do you know whether any such test was ever made?

A. It would have to be made, according to the Mining Bureau, or you could not proceed with the well. I don't recall.

Q. That is the Mining Bureau regulation, is it not? [3886]

A. That is the Mining Bureau regulation.

Q. And the records of the Mining Bureau, the Division of Oil and Gas, would show whether that test was made, would they not?

A. They should show, or they could send a representative out and witness a well through an operation and permit you to do something else. I don't know. I don't recall that.

Q. According to your testimony, was the cementing job made and was the water shut-off test made?

A. I don't recall.

Q. You do not recall actually whether there was ever any cement run in this well at all or not, do you? A. I certainly do.

Q. Let us get back to this 5 $\frac{3}{4}$ -inch. You testified under direct examination that the 5 $\frac{3}{4}$ -inch was

(Testimony of Jesse E. Hall, Sr.)

cemented in the well. Now you say you don't recall. Which is correct?

A. I haven't said I don't recall whether it was cemented. It was cemented.

Q. Do you recall whether there was any test made for a shut-off?

A. Well, a matter of that significance, at this time, and I would only have to go to the record to say that you could not proceed unless it satisfied the Mining Bureau. I would say, yes, there was a test made. [3887]

Q. Do you have any recollection of whether a test was made? A. No, I do not.

Q. Did you proceed with the well after the test was made, if it was made?

A. We proceeded with the well.

Q. What did you do in that well after the 5 $\frac{3}{4}$ -inch casing was cemented?

A. The drilling operations was resumed and the well was carried on down to the oil zone and another string of pipe was set with a liner on it, and put on production and produced.

Q. Before that drilling could be carried on as you have stated, you have stated that a water shut-off test is required. You know that you continued the drilling, don't you?

A. Yes, the drilling was continued.

Q. And therefore what is your testimony with respect to the water shut-off?

A. Well, my testimony——

Q. Tests? A. It was made.

Q. And you recall that, don't you?

(Testimony of Jesse E. Hall, Sr.)

A. No, I do not.

Q. You know that you could not have drilled without it; [3888] isn't that correct?

A. I know that the Mining Bureau, when you are drilling, they make your wells every so often and you have to live up to the requirements or they shut you down. They are very rigid on that.

Q. Well, just answer the question: You know that you could not have drilled and put another casing in the well, as you have testified you have done, without the water shut-off tests having been made?

A. I don't believe you could. I wouldn't—

Q. Do you know whether you attempted to carry the hole to 5200 feet before you attempted, if you did, to cement the 5 $\frac{3}{4}$ -inch casing in the well?

A. We attempted to carry it as deep as we could. We were in a fishing job and we got a special permit to set the pipe off of bottom and to set it off the bottom at a depth to protect the hole so we could go ahead and complete it. And I recall the Mining Bureau having a witness on the job.

Q. Who was the witness?

A. I don't know. I believe his name is Munser, as well as I recall.

Q. You mean the man who signed this particular exhibit 271, E. H. Musser, M-u-s-s-e-r?

A. Musser. He was our agent out in that [3889] field.

Q. Do you know who it was that dictated this particular report 271, or who the initials "P.J.H." stand for? Maybe I can help you. You knew a man

(Testimony of Jesse E. Hall, Sr.)
in the Mining Division at that time by the name of
Paul J. Howard, did you not?

A. Paul J. Howard, and Mr. Musser replaced
on that work. It was the Mining Bureau in Bakers-
field.

Q. Do you know Mr. Paul J. Howard?

A. I know Paul J. Howard, too, very well.

Q. And the other man with the Mining Bureau
up there at that time, was a man by the name of
Vern E. Austin, was it not?

A. I don't know at that time. I know Vern
Austin, very well, too.

Q. Who was the driller? Who were the drillers
or driller who was actually operating as an operator
on this Garner-Bristol #1 well, during August and
September of 1935?

A. I don't recall all. There were quite a few drillers
worked there. A fellow by the name of Ames,
George Hall, my son, and myself drilled most all
the hole and most all of the operation.

Q. Who else?

A. I don't recall any other at this time. There
could have been somebody got sick and a relief
driller. This operation went on for quite a while be-
cause we got in [3890] a bad fishing job.

Q. You do not recall anybody else. Wasn't there
a man by the name of Fat something, Fat Arnold or
something of that kind, that was the driller?

A. I don't believe so. I don't know a fellow by
the name of Fat Arnold.

Q. Do you know a man by the name of Arnold
at all?

(Testimony of Jesse E. Hall, Sr.)

A. Well, I have knew Arnolds before, but I don't recall one at this moment.

Q. Was he a driller on this particular well?

A. I would have to see a log or something to refresh my mind on it. It has been 20 years ago.

Q. Besides the driller who were the members of the crew that were working on this well during August and September of 1935?

A. Mr. Lyon, I could only go back and call some of the men that worked on the well. I couldn't tell you who worked on it in August of 1935. I recall some of the men that worked on the well, possibly recall them all if I could study about them.

Mr. L. E. Lyon: I will ask that this file, which has not been presented but which I will now present to the other side for inspection, which is a photo-static copy of the file of the State Division of Oil and Gas, be marked in evidence as Defendants' Exhibit next in order. [3891]

* * *

The Court: Received in evidence. Exhibit GZ, is it not, Mr. Clerk?

* * *

Q. (By Mr. L. E. Lyon): Mr. Hall, in this report—I believe you are familiar with reading such reports, are you not?

A. Oh, I am not too familiar. I haven't read a drilling complete well report for several years, but I have been working in this stuff a pretty long while.

Q. I call your attention to a report of the Divi-

(Testimony of Jesse E. Hall, Sr.)

sion of Oil and Gas of June 14, 1944, which is after the abandonment of this well, and to a notation on this report of the Division with respect to the surface casing, and that note says: "The surface casing is 8 $\frac{5}{8}$ inches and not 10 $\frac{3}{4}$." Does that refresh your recollection anywhere as to the size of the surface casing?

A. No, it does not. I definitely recall it of being 10 inches. I got out of the well at the time it was put on production to a man by the name of Frank Goldman.

Q. Now I will call your attention to one further entry on this report. [3892]

A. What date did you say that was, Mr. Lyon?

Q. That was June 14, 1944.

A. I left there in '35. [3893]

Q. In the report of the Mining Bureau of the Division of Oil and Gas, April 27, 1944, there is a statement, "5 $\frac{3}{4}$ inch cement, 5955 not tested." Doesn't that establish that the record of the Mining Bureau shows that there was no testing of that alleged cementing of the 5 $\frac{3}{4}$ inch casing?

A. I couldn't say at that later date. I know the drilling wouldn't have been resumed if there hadn't been some type of a test made either orally or writtenly or some way or other. It had to be permitted.

Q. Mr. Hall, as a matter of fact, these reports made to the Division of Oil and Gas as shown by this Exhibit GZ on the pages which I am marking here, starting with—well, I won't mark them, but starting with—the one showing the received date

(Testimony of Jesse E. Hall, Sr.)

of the Division of Oil and Gas of December 27, 1935, and continuing thereafter for six pages, all bear your personal signature, don't they?

A. That is correct.

The Court: Are you referring to Exhibit GZ?

Mr. L. E. Lyon: Yes, your Honor.

Q. Now these scratchers or alleged devices that you asserted that you ran in this well, you state that those that were on a $5\frac{3}{4}$ inch pipe were on the casing setting at the side of the well for at least 30 days before they were run in the well, is that correct?

A. Well, there was quite a period of time. I don't [3894] know. I would have to get a lot of records to go to find out when we finished after we bought. We bought the pipe from the National Supply Company. It was hauled there. And I remember the pipe being there quite a lengthy time. As to days, I couldn't tell you.

Q. Well, you stated on direct examination it was 30 days. Now do you want to change that testimony?

A. Well, I think I said it was a period something similar to that. I tried to qualify it. I couldn't pin it down to dates because I don't remember. I just know it was there a length of time.

Q. Well, you have no better estimate than 30 days?

A. No, I don't have no better estimate, only I would rather think it was there longer than that. It could have been shorter. I would have to get the time that the pipe was hauled from the National

(Testimony of Jesse E. Hall, Sr.)

Supply. I believe that would be the best way I can find it.

Q. Didn't you testify also previously in this case that they were there 60 days at least?

A. It could have been 60 days because we were on that well, as I recall it, over a year.

Q. Well, the two estimates that you have given by testimony, one is 30 and the other 60 days before this cross-examination, is that correct?

A. I mean it not to be days, I mean it as a space of [3895] time over some length, of material length. I couldn't tell you when you pin me down to days. It is just a faint recollection and I recall it was there quite a considerable time.

Q. Now, where was this casing where these scratchers, as you have testified, located with respect to the rig floor?

A. Well, I don't recall the directions but I recall it—I recall taking a map and drawing a map of that location and where the pipe was, and as you come in the front road you come in by the mud pumps and the ditch and you passed around the engine and the pipe was then back of that, quite a bunch of pipe.

Q. Was that on the right side of the derrick floor?

A. Well, it was back to the side and extended outward from the derrick floor.

Q. Well, now, this particular length of pipe that you say the scratchers were on, were they located right next to the derrick floor?

A. They weren't on the pipe, Mr. Lyon, until

(Testimony of Jesse E. Hall, Sr.)

the pipe was run. They were piled in a pile down on the ground at the corner of the rack. They were brought out there and throwed out of a car by this fellow Nelson, and they were pushed onto the pipe there for safekeeping where they couldn't get harmed.

Q. Your testimony now is that they were not on the pipe? [3896]

A. Not on it during this 30 days or 60 days, or whatever this period of time that the stuff set there, no, they weren't on the pipe.

Q. But they were right beside the pipe?

A. They were down kind of under the pipe.

Q. What do you mean by down kind of under the pipe?

A. The pipes were on the rack and they were down on the ground, they weren't on the pipe at all.

Q. They were on the right side of the rig floor then? A. No.

Q. Down below the pipe?

A. They were back out at the pipe rack under the pipe. The rig floor wasn't even close. You might call it close. It was close to the end of the pipe.

Q. How far was it away?

A. Well, I would say the pipe is 30 feet and across the rack, 30, 35 feet, and back under; I would say 30 or 40 feet from the rig floor.

Q. Now did any of the agents of the Oil and Gas Division inspect or look at the casing that is going to be run on a well? A. What is that?

Q. Do the agents for the Division of Oil and

(Testimony of Jesse E. Hall, Sr.)

Gas look at the pipe or casing that is going to be set in a well?

A. I would say they were out there many times during [3897] the period of time the pipe was there.

Q. They were out there looking at it very carefully, is that correct?

A. No, I wouldn't say that. That is emphasis.

Q. Were the drillers acquainted with the casing that was going to be run in the well?

A. How was that?

Q. Were the drillers that were on this job acquainted with the casing that was going to be run in the well?

A. Well, they knowed about the casing.

Q. Did they see it?

A. Well, they certainly did.

Q. Did they look at it?

A. Well, they would have to look at it. It was in their way. They couldn't do anything else but.

Q. Did they look at all of the equipment that was on the well? A. They would have to.

Q. Did your son George know what equipment was going to be run on the casing, on this $5\frac{3}{4}$ inch casing? A. I would say yes.

Q. Did you know what was going to be run on it? A. What do you mean, did I know?

Q. Yes. You were going to run, you proposed to run this $5\frac{3}{4}$ inch casing. Do you know what was going to be [3898] run on it?

A. The first time—I don't recall of making any proposal to run, or what was to go on it. After it

(Testimony of Jesse E. Hall, Sr.)

lay there—I don't recall what was to be put on the casing at this time.

Q. Did all of the drillers that were employed on the well know what was to be run on the casing?

A. I wouldn't think so. If they seen it they would know you were going to run a casing shoe, or if they seen anything that you are supposed to put on, I imagine they would know when you instructed them to put it on.

Q. Did you talk to the drillers what was going to be run on the casing?

A. Well, I don't believe that there is any other drillers except this fellow Ames, my son and myself.

Q. Did you talk to all of the drillers then about what was to be run on the casing?

A. I don't recall, Mr. Lyon.

Q. Who was the actual driller who was on the job when you state the casing was run into the hole, this $5\frac{3}{4}$ inch casing, Mr. Hall?

A. I remember staying on the job practically all the way through. I think my son George was the actual driller that run the pipe.

Q. Anybody else? [3899]

A. Well, this fellow Ames, there is a question of him working over. I believe pretty well everyone in the crew pretty well stayed over on it.

Q. Everybody that was there?

A. We generally keep two crews.

Q. And your recollection is that the entire crews, the helpers, drillers and all, stayed on the

(Testimony of Jesse E. Hall, Sr.)

job when this $5\frac{3}{4}$ inch casing was being run in the hole?

A. No, I put emphasis on it. To my recollection we had plenty of help and we kept them over and I don't recall hiring any extra help. And that is as much as I can remember of what happened.

Q. Is it your custom that you followed of having everybody that was working staying over when the casing was run in the hole?

A. Sometimes, as they were needed. I don't believe they would need them all.

Q. Well, have you any recollection who was present actually at the time the $5\frac{3}{4}$ inch casing was run in the hole? [3900]

A. Except myself and my son, is all I can remember was actually present.

Q. You can't remember anybody else?

A. No, I couldn't remember, or disremember them.

Q. Now this casing with scratchers that you assert was like this exhibit—where is it, the one with the wires on it—here it is—you assert that this Exhibit 72-A is a type of scratcher that you had in this well and there were six like that, if I understand your testimony, is that correct?

A. I recall seeing something or hearing something that there were six, and my recollection, the best recollection I have, is that there were six of them.

Q. Those are the kind of scratchers which you

(Testimony of Jesse E. Hall, Sr.)

have testified are useless and won't reverse in a well and the scratcher wires break off, is that right?

A. They are not 100 per cent useless.

Q. Just answer the question.

A. I have testified that the wires will break off when reversed in a small hole.

Q. And you have written that such scratcher is useless, haven't you?

A. They are as far as the expense of running a well, why you couldn't afford to take a chance with them. I think the public has so proved it. [3901]

Q. And you wrote that fact, that they were useless, in the letter which you wrote in 1942 to Mr. English, did you not?

A. Yes, I remember writing a letter to Mr. English.

Q. And you further wrote the fact that those scratchers were useless in your article that you wrote, "Index to Well Completions," and circulated throughout the trade, which is Exhibit CT here in evidence, and I will refer you to pages 14 and 15 of that document. Isn't that true?

A. (Examining exhibit): I don't know to what extent it circulated in the trade, but I endeavored to, anything I have written I have endeavored to give it to the trade.

Q. And here on page 15 you say, "However, the first time the pipe was lifted the flanges on the scratcher that had to reverse themselves in the shale or soft formation tore loose and dug out much formation and those that reversed in hard forma-

(Testimony of Jesse E. Hall, Sr.)

tion were cracked, broken and rolled up, rendered useless." You wrote that, didn't you?

A. Well, I wrote it, probably helped write it. I have given thought to it. And that is still my belief.

Q. And the scratchers that you were then referring to in that Exhibit CT and also in the English letter were the scratchers which you state are exemplified by Exhibit 272-A, are they not?

A. Of that type. I was writing about that type of [3902] scratcher, a radial scratcher, radial bristle.

Q. Now the stiffer the wire, in your opinion, the more useless that scratcher would be, isn't that true?

A. That is correct. No, it is not true in all cases. You can get the wire so small that it wouldn't be effective at all.

Q. And the wire on this scratcher, Exhibit 272, is 15 gauge. Here is a wire gauge.

A. I don't question it. We used 15 gauge, 14 gauge. Those are the two popular gauges for the bristles.

Q. And you represented this Exhibit 272 to be a replica of what you state was made?

A. That is correct.

Q. And didn't you testify that the original scratchers were made with 13 gauge wire?

A. The original scratchers could have been made with 14 gauge wire because I used—

(Testimony of Jesse E. Hall, Sr.)

Q. Just answer the question. Didn't it say 13 gauge?

A. I don't know, Mr. Lyon. I don't recall.

Q. And 13 gauge, on a wire gauge, is a larger wire than 15 gauge?

A. I don't recall having used a 13 gauge.

Q. Answer the question.

A. 13 is the larger, 14 is next and 15 is [3903] next. When you get to 15, they are getting pretty small.

Q. And by actual figures the 13 gauge wire is .072, 14 gauge is .080 and 15 gauge is .0915 in diameter, and I am reading from a Starrett gauge. Will you accept that? A. Yes.

Q. Now, Mr. Hall, along about September, 1935, you had Mr. Maxwell file this application, serial No. 38891, which was for improvement in casing attachment and which is here in evidence as Exhibit—what is that, PD?

Well, it was PD in the case in Louisiana. I believe that is what it shows on its face here.

* * *

Mr. L. E. Lyon: Exhibit 150. [3904]

* * *

Q. (By Mr. L. E. Lyon): In the United States Patent Office, did you not?

A. That is correct.

Q. And that application is directed to your spiral centralizer, is that correct?

A. That is correct.

(Testimony of Jesse E. Hall, Sr.)

Q. And this correspondence that you state you had with Mr. Robinson and Mr. Maxwell eventually resulted in the so-called Cosco centralizer deal, did it not? A. No, sir.

Q. By that correspondence I mean these Exhibits 48, 48-A, 49, 49-A, and that series of exhibits where you testified that Mr. Maxwell stated he had someone who might be interested, isn't that true?

A. In a round-about way. I was working on—

Q. Just answer the question.

A. Well, no, it did not.

Q. You formulated that agreement with Mr. Robinson and Mr. Lacy and the other parties in the Cosco deal shortly after this application, Exhibit 150, was filed, did you not?

A. Immediately when I discovered how to fasten the centralizer on the pipe, I immediately came to Los Angeles and contacted Mr. Joe Horaska for the Coast Oil Field Engineering Company and they were interested and we made a deal with [3905] them.

Q. And Joe Horaska was and had been a client of Mr. Maxwell for some time, wasn't he?

A. I don't know. I don't believe that Horaska was Mr. Maxwell's customer. I shouldn't say that. I have no right to say it.

Q. And isn't it a fact that the device which you state that you took to Mr. Maxwell's office and which is shown by this invoice which you have produced here, Exhibit 47, which was dated May 6, 1935, was a model of the spiral centralizer?

(Testimony of Jesse E. Hall, Sr.)

A. Absolutely not.

Q. You never took any model of the spiral centralizer to Mr. Maxwell's office?

A. I never made a model of a spiral centralizer at any time. I only made a lifesize operating spiral centralizer and it was the only one. There was never a model taken there. The only thing that I ever recall of doing anything at all or taking is some tin snips and cutting out some spiral springs, spiral strips out of very thin tin, can, and putting them together in a form of a very small centralizer. And I don't believe that Mr. Maxwell ever saw that because that was done at quite a late date.

Q. Isn't it a fact, Mr. Hall, that a spiral centralizer when used in a hole acts, when going in the hole, to trowel the side of the hole?

A. Not necessarily. The spiral [3906] centralizer—

Q. Isn't it a fact—

Mr. Scofield: Let him finish his answer.

The Witness: The spiral centralizer was so built that one spring began in the spiral looking down upon it where the other one left off to contact the entire bore of the well.

Q. (By Mr. L. E. Lyon): And that action of going in a well with that spiral centralizer was to trowel the mud on the wall just the same as a plasterer trowels the plaster on the wall of this room? A. No.

Q. And that isn't what you testified before Judge Porterie?

(Testimony of Jesse E. Hall, Sr.)

A. No, that isn't true.

Here is the true situation of the spiral centralizer. We made the spiral centralizer—I mean a spiral without the underneath helical twist, and when we would run them in the hole at that time we didn't know how to pull them down to size, we would stir up too much mud, there was too much of an abrading element.

At that time—that was in the last of '36 or '37—I devised the idea of making the helical twist and going in the hole so it wouldn't stir up so much mud; it had more of an effect toward leaning to troweling than it would being scraping, and that would make the other side on the upper movement more abrasive to take it off. That gave me quite a bit of relief [3907] in running the spiral centralizers in order to not stir up too much mud. That was the second patent that was filed.

Q. Isn't it a fact that your advertisements and the advertisements of the Weatherford Spring Company and the advertisements of the Weatherford Oil Tool Company claim that the spiral scratchers trowels the mud in going into a hole?

A. That is absolutely true because the fact that it stirs up less mud, and that is a great complaint in the oil fields today, that they stir up so much mud going in the hole that it causes more or less trouble. So we devised the undertwist to get away from that particular trouble.

Q. Now isn't it a fact, Mr. Hall, that all spiral centralizers sold by the Weatherford Oil Tool Company have for many years been banded so that they

(Testimony of Jesse E. Hall, Sr.)

are at least a quarter to a half inch smaller in external diameter than the internal bit diameter of the hole?

A. I don't believe so. They are much larger.

Q. You don't think that that is specified in the advertisements?

A. The band is smaller but it says, all of our literature says, or all of the salesmen, they all know that when you cut the band off the centralizer it swells out about an inch.

Q. Isn't it specified in your advertisements that the scratchers must be mounted on a hollow casing so that they [3908] will be one-quarter and one-half inch smaller than the diameter of the hole?

A. I don't recall, it could be, but when they are mounted, that is, after they begin to run scratchers with them—the centralizer has had a different phase, a different job to do since the scratcher has become a part of the tool. We realize that the scratcher and the centralizer is together one tool. Neither one of them is not really a tool to do the job by itself, and the trade accepts them both together. [3909]

Q. Now, how far are scratchers mounted apart on the casing—about 90 feet, aren't they, or more?

A. Scratchers?

Q. Centralizers I mean.

A. Scratchers and centralizers are mounted, lots of jobs are mounted on every joint.

Q. Just answer the question.

A. Well, I am telling you how they are mounted. And a lot of jobs, speaking of centralizers

(Testimony of Jesse E. Hall, Sr.)

now, centralizers are mounted one on every joint and at every other joint. There are two ways to mount them.

Q. What does the advertising literature of your company state with regard to that? Doesn't it state they are put 90 feet apart?

A. I think it would be according to the conditions of the hole. I think that they are qualified to put one on every joint if the hole has got an inclination. I know a lot of places they put two to the joint.

Q. I place before you the Weatherford Tool Company catalogue of March, 1951, Exhibit AY, and refer you to page 5025 and ask you if that is not the advertised and recommended spacing of scratchers and centralizers of the Weatherford Oil Tool Company?

A. Yes, but that is not followed in all conditions, and that is why they advertise to send a man out on the job [3910] and first analyze the job and tell them what to put on. This is attempted to meet all conditions, but almost every job is analyzed and engineers put them on to suit the conditions of the job.

Q. Can you show me any advertisement or publication of Weatherford Oil Tool Company at any time which advocates the mounting of the scratchers and centralizers in any manner different than Exhibit AY?

A. I don't believe that the mounting of them different, other than they show the shoe joint

(Testimony of Jesse E. Hall, Sr.)

mounted different, and possibly in some of the write-ups. But since these lawsuits have been going, we have held out from the trade in magazines and catalogues all the new discoveries. The new discoveries are now carried to the trade, and have been for the last seven years, by more or less oral, because we run and operate the jobs.

Q. Let me ask you something: In the advertising procedure of the Weatherford Oil Tool Company as shown by Exhibit AY, it is advertised that at any time there is a centralizer mounted on the casing a scratcher is placed either immediately below or immediately above that centralizer, is it not?

A. That is true. That is for the reason that the centralizer is the toughest and the strongest, and holds the pipe in the center of the hole so the scratcher can have [3911] a better chance to function. If a scratcher is on the pipe by itself and no centralizers, there is very few jobs free run. It will either stick the pipe or be torn up. You have to have centralizers to center the pipe and check it. Too much weight in the pipe for that.

Q. In this well, this Garner-Bristol Well #1, isn't it a fact that you lost a section of the core barrel in the hole and after you fished for that core barrel for a period of time you found you could not get it out, so that you requested permission of the Division of Oil and Gas to try to drill by that, or to sidestep or side drill off from that obstruction in the hole?

(Testimony of Jesse E. Hall, Sr.)

A. No. I tried to state this morning that we did a fishing job the last trip in the hole. We had already cored the thing, and it is a funny thing to say "the last trip in the hole with the drill." We were coring. My son was running the core and there came a hole in the drill pipe and it washed the hole through and the pipe was stuck below it. We pulled the pipe in two and we went in with another string of pipe and it fell in two. It was a compound bunch of fishing jobs there.

Then I went down to the Mining Bureau and discussed it with them, and I recall three or four times them coming out there before they would give me a permit to go ahead and set the casing with the fish in the bottom of the hole. We [3912] had the fish cleaned out to a certain depth, and then we set the pipe down as near as we could do it so we could start drilling fresh and tear out the balance of the pipe or sidetrack it, whatever the case might be.

Q. Isn't it true that you reported to the Division of Oil and Gas that you had junk in both of those holes at a depth from 4650 to 5640 feet and that you were using a whipstock and that the sand caved so badly in the hole that you could not keep the fish out of the way?

A. I don't recall other than I recall that we tried to sidetrack this drill pipe in the hole.

Q. And it kept tipping over and getting in your way, didn't it?

A. No, we got away from it for a while and we

(Testimony of Jesse E. Hall, Sr.)

got another fish in the other hole, so we had trouble all the way up and down the hole.

Q. All right. Just explain to me what these items mean on Exhibit 271, then, where it says: "The sand caves badly and the drill pipe catches on the whipstock frequently." What does that refer to?

A. It refers to the whipstock in the hole.

Q. And that when you try to run a pipe in by it you caught the pipe on the whipstock, didn't you? A. That was our belief.

Q. And that is what you reported to the Division of [3913] Oil and Gas?

A. And they accepted it, and they witnessed the well all the way through.

Q. Is it your testimony and belief that these purported scratchers that you had at this well were standing around the well, all of them for some particular time before they were used; isn't that right, Mr. Hall?

A. Sometime. I don't recall how much time they were there. I remember they were there some time.

Q. And it is pretty common for everybody working on a drilling rig to be pretty well acquainted with everything that is around it, isn't it?

A. They could be, should be, I will say [3914] that.

* * *

(Testimony of Jesse E. Hall, Sr.)

Cross-Examination
(Resumed)

Mr. L. E. Lyon: There has been supplied to me a file of papers which include the original of the letter of January 14, 1954, addressed to "Mr. John W. Hickey" of the letter sent them by the Shell Oil Company, the copy of which has already been placed in evidence, so I will not require that.

There is a file of telegrams received and these telegrams are addressed to Mr. Earl Smith, to Earl H. Smith, Jr., general counsel for the Weatherford Oil Tool Company. Who [3936] is that?

Mr. Scofield: He is sitting next to me.

Mr. L. E. Lyon: That is the man. Now, these refer to wires sent out and "Your telegram dated January 7, 1954." Where are the copies of that?

Mr. Smith: You have it in your hand, Mr. Lyon, the last paper in the stack, the very last.

Mr. L. E. Lyon: The very last. Is this an asserted list of the companies to whom this telegram was sent?

Mr. Smith: No. The list of Weatherford Oil Tool Company employees to whom the telegram was sent.

Mr. L. E. Lyon: I see. I will offer this telegram as just identified by Mr. Smith in evidence at this time as the defendants' exhibit next in order, it being the telegram sent out by Mr. Earl H. Smith, Jr., general counsel of the Weatherford Oil Tool Company, Inc., to a stated list of names of employees of Weatherford Oil Tool Company, seeking

(Testimony of Jesse E. Hall, Sr.)

information and asking them to make inquiries with respect to sales of B and W equipment.

* * *

Mr. L. E. Lyon: I would like to ask if with any of these instructions to any of these people they were told to deliver a copy of the injunction of this court when they made these inquiries? [3937]

Mr. Smith: The only instructions given to men were contained in the telegram, Exhibit—what is that, HA?

Mr. L. E. Lyon: I will accept that stipulation.

The Court: The document last offered is received in evidence and will be marked Defendants' Exhibit.

The Clerk: HA.

* * *

Mr. L. E. Lyon: Here is the second paper in this list, and I presume it is that these telegrams were received by you, Mr. Smith?

Mr. Smith: They were received in the office and delivered to me.

Mr. L. E. Lyon: I will offer the second document in this as the defendants' exhibit next in order, which is a letter written by H. T. Cromm to the Weatherford Oil Tool Company, attention of "Dear Mr. Bodin." Who is Mr. Bodin, B-o-d-i-n?

Mr. Smith: One of the employees who works for Weatherford Oil Tool Company.

Mr. L. E. Lyon: And which states, in part: "Jones and Laughlin, Bethlehem Supply Company and Continental Supply had stop orders and were

(Testimony of Jesse E. Hall, Sr.)
selling B and W scratchers for an approximated period of 18 months." [3938]

* * *

Mr. L. E. Lyon: It is offered for the purpose of identifying a letter at this time. And I will offer this last letter. What is the exhibit number?

The Clerk: HB.

Mr. L. E. Lyon: HB in evidence.

* * *

Mr. L. E. Lyon: Here is a letter from Mr. Al Smith, Harvey. Who is Mr. Al Smith, Harvey?

Mr. Smith: Sales representative of Weatherford Company, located at Harvey, Louisiana.

Mr. L. E. Lyon: It is a telegram addressed to you and, I presume, received by you.

Mr. Smith: Yes.

Mr. L. E. Lyon: This telegram is dated January 8, 3:23 p.m. I presume that is January 8, 1954?

Mr. Scofield: All of those were in 1954.

Mr. Smith: I presume so. They were received in the first few days of January of this year.

Mr. L. E. Lyon: I will offer this wire in evidence as Defendants' Exhibit next in order. [3939]

* * *

The Clerk: Defendants' Exhibit HC in evidence.

Mr. L. E. Lyon: Here is a wire received also, no date given, but it must have been on the 10th, I guess, of January, 1954.

Mr. Smith: I don't know what date it was re-

(Testimony of Jesse E. Hall, Sr.)

ceived, but it was received in the first two weeks of January of 1954.

Mr. L. E. Lyon: From Jack Humphreys. Who is Jack Humphreys?

Mr. Smith: He is also a salesman of Weatherford Oil Tool Company. And in that regard, all those telegrams are from a representative of Weatherford Oil Tool Company.

Mr. L. E. Lyon: Which I offer in evidence as the Defendants' Exhibit next in order.

The Clerk: Defendants' HD.

* * *

Mr. L. E. Lyon: And who is Tommie Clausen?

Mr. Smith: To the best of my understanding, he handles Weatherford merchandise.

Mr. Scofield: At Williston, North Dakota.

Mr. L. E. Lyon: He is an employee of the Weatherford Company? [3940]

Mr. Smith: No, he is not. That is why I make the distinction.

Mr. L. E. Lyon: This telegram was received by you on January 12th, 1954?

Mr. Smith: Yes, I believe it was.

Mr. L. E. Lyon: I will offer this telegram in evidence as Defendants' Exhibit next in order.

The Court: Received in evidence.

The Clerk: Defendants' Exhibit HE in evidence.

* * *

Mr. L. E. Lyon: James Bradley, is he an employee of Weatherford Oil Tool Company?

(Testimony of Jesse E. Hall, Sr.)

Mr. Smith: Yes, he is.

Mr. L. E. Lyon: Located where?

Mr. Smith: Corpus Christi.

Mr. L. E. Lyon: Corpus Christi, Texas. This wire was received by you on January 11, 1954?

Mr. Smith: Right, on the date stated on the telegram.

Mr. L. E. Lyon: This wire refers to other stop orders issued by other companies of the B & W equipment of which I was not even aware, your Honor, as the result of the January, 1952, letter, the \$2.50 royalty letter. I will offer this wire in evidence at this time as Defendants' Exhibit.

The Clerk: HF. [3941]

* * *

Mr. L. E. Lyon: Now, who is Bob Yates; is he an employee of the Weatherford Oil Tool Company?

Mr. Smith: Yes, employed at Shreveport, Louisiana, sir.

Mr. L. E. Lyon: And he covers the Shreveport area, is that correct?

Mr. Smith: Well, north Louisiana and Arkansas, and at one time a portion of east Texas.

Mr. L. E. Lyon: And this telegram was received by you on January 9, 1954, was it?

Mr. Smith: At or about that time. I assume it was on the 9th, if that is the date. [3942]

Mr. L. E. Lyon: I will offer this telegram in evidence as Defendants' Exhibit next in order.

Mr. Scofield: No objection.

(Testimony of Jesse E. Hall, Sr.)

The Court: Received in evidence.

The Clerk: Defendants' Exhibit HG in evidence.

Mr. L. E. Lyon: Who is Mr. Lee Monty?

* * *

Mr. Smith: Under his agreement with the company he has the entire State of California, and I am not familiar with his intimate operations.

Mr. L. E. Lyon: And this wire was received by you on January 9th?

Mr. Smith: If that is the date stated.

Mr. L. E. Lyon: I will offer this wire in evidence as Defendants' Exhibit next in order.

The Court: Received in evidence.

The Clerk: Defendants' Exhibit HI in evidence. [3943]

* * *

Mr. L. E. Lyon: And who is R. L. Wood?

Mr. Smith: A Weatherford sales representative at Abilene, Texas. I received that telegram January 9th.

Mr. L. E. Lyon: I will offer this telegram in evidence as the Defendants' Exhibit next in order.

The Court: Received in evidence.

The Clerk: Defendants' HJ in evidence.

* * *

Mr. L. E. Lyon: And Oscar Gay, is he an employee of the Weatherford Oil Tool Company?

The Witness: Yes, he is; located at——

Mr. L. E. Lyon: And covering what territory?

(Testimony of Jesse E. Hall, Sr.)

Mr. Smith: Frankly, I don't know. He is located at Long Beach.

Mr. L. E. Lyon: And this wire which you received, you received this wire on January 9, 1954, did you?

Mr. Smith: Yes.

Mr. L. E. Lyon: I will offer this wire in evidence as the Defendants' Exhibit next in order. All of these offers being in evidence, having been pursuant to my demand for the production of these documents, your Honor.

The Court: Received in evidence. [3944]

* * *

Q. (By Mr. L. E. Lyon): Mr. Hall, I am placing before you Exhibit HF, being a wire sent by James Bradley from Corpus Christi to Mr. Earl H. Smith, the Weatherford Oil Tool Company, on January 11, 1954, and I will ask you if you know who this wire refers to when it states: "Alice and Freer of Corpus Christi"? A. No, I don't.

Q. Is that a distributor, a supply house, or what?

A. I would rather say it is a town, Corpus Christi, Alice, and Freer. I think those are three towns.

Q. Then you read this line: "J and L"—what is "J and L," do you know. A. Yes.

Q. What is "J and L"?

A. I presume it is J and L Steel Corporation.

Q. Jones and Laughlin? A. Yes.

(Testimony of Jesse E. Hall, Sr.)

Q. And this wire then says, and according to the way you interpret it: "J and L Corpus Christi Alice and Freer Stopped Selling August or September 1952 and Resumed Selling About May of 1953." Is that the way you read it?

A. I read: J and L, the Corpus Christi store, Alice store and Freer store. Now, I don't know whether they have [3945] stores in those three places, but that is what I would read it.

Q. And it says that they stopped selling in August or September, 1952, and did not resume until May of 1953? Is that the way you read it?

A. That is the way I read it.

Q. In the next line it says: "Continental Corpus Christi McAllen"—is that another town in Texas?

A. I would read that as a town.

Q. And what is the next one; is that a town, too, Falfurrias?

A. That is a town, too, to my opinion.

Q. "Stopped Selling About July, 1952, and Has Not Resumed Selling Yet." So in that sentence you read: Corpus Christi and McAllen and Falfurrias all refer to towns in Texas, is that correct?

A. I would say so.

Q. And it says here on the end: "Alice Store Sold One Order Since Stop Order." That is, I presume, the Alice store referred to up here with reference to J and L Corpus Christi. Is that the way you read the wire? A. I believe so.

Mr. L. E. Lyon: I will offer also this letter of January 15, 1954, which is addressed to Mr. Thomas E. Scofield, Kansas City, Missouri, and

(Testimony of Jesse E. Hall, Sr.)

written by J. Ronald Johnson, [3946] attorney for the Jones and Laughlin Steel Corporation, which letter starts off in the first sentence and says: "Mr. John Hall has asked on several occasions concerning the handling by us of B & W Nu-Coil and Multiflex scratchers." That is John A. Hall, and ask that this letter be received in evidence as the Defendants' Exhibit next in order.

Mr. Scofield: No objection.

The Court: Received in evidence.

The Clerk: Defendants' HL.

* * *

Mr. L. E. Lyon: I presume, Mr. Smith, that this is a true copy of the letter which was on that date addressed to [3947] the Stanolind Gas & Oil Company by you and Mr. Hickey jointly?

Mr. Smith: No.

Mr. L. E. Lyon: By whom? Who is Mr. E. H. Smith?

Mr. Smith: The letter is not a true copy of the letter that went to Stanolind, in these respects: the copy that went to Stanolind was a blind copy and did not indicate a copy to Mr. Scofield. Furthermore, my name, my signature was not on the letter to Stanolind. That signature is on this carbon to Mr. Scofield. The original is on the letterhead.

Mr. L. E. Lyon: And the stamp of Mr. Scofield did not appear on it, also?

Mr. Smith: That is right.

Mr. L. E. Lyon: With this letter was there any copy of the injunction of January 25, 1952, sent

(Testimony of Jesse E. Hall, Sr.)

with the original of this letter to the Stanolind Oil & Gas Company?

Mr. Smith: So far as I know there was not. Mr. Ekey sent the letter. I did not.

Q. (By Mr. L. E. Lyon): Mr. Hall, I place before you a letter addressed to Pure Oil Company, or addressed to you by the Pure Oil Company, in which the first letter refers to a conversation which you had with the Pure Oil Company, is that correct?

A. That is correct.

Mr. L. E. Lyon: I will offer this letter of January 7, 1954, in evidence as the Defendants' Exhibit next in order. [3948]

The Court: Received in evidence.

The Clerk: Defendants' Exhibit HN in evidence.

* * *

Q. (By Mr. L. E. Lyon): At the time you had this conversation with Mr. E. E. Edwards, purchasing agent of the Pure Oil Company, on January 7, 1954, did you give Mr. Edwards a copy of the injunction of January 25, 1952?

A. I did not, but I asked him if he knewed about the injunction in this case and he said he did.

Q. Did you tell him anything about the condition of the case and issues of the case as required by the injunction of January 25, 1952?

A. I never told him not one condition about the case of any kind.

Q. Now I hand you a copy of a letter addressed to you of January 8, 1954, from the Atlantic Re-

(Testimony of Jesse E. Hall, Sr.)

fining Company. Did you have a conversation with that man at the Atlantic Refinery Company on or about January 8, 1954?

A. I talked to the lawyers. I presume this is one of them.

Q. When did you have that conversation with regard to the date of this letter?

A. Prior to that date of the letter possibly one day or two days. [3949]

Mr. L. E. Lyon: I will offer in evidence this letter which is addressed to Mr. J. E. Hall, Sr., Box 303, Weatherford, Texas, and signed by Mr. "J. P. Johnson" of the Atlantic Refining Company, in evidence as the Defendants' Exhibit next in order.

The Court: Received in evidence.

The Clerk: Defendants' Exhibit HO in evidence.

* * *

Q. (By Mr. L. E. Lyon): At the time you had this conversation with Mr. J. P. Johnson about January 7, 1954, did you deliver to the Atlantic Refining Company a copy of the injunction of January 25, 1952? A. I did not.

Q. Did you tell him just exactly what all of the issues and contentions of the parties were in this litigation?

A. I never discussed no issues of the parties with him.

Q. I place before you a copy of a letter addressed to you, entitled "Re scratchers and central-

(Testimony of Jesse E. Hall, Sr.)
izers" of January 15, 1954, signed by "Mr. Darrell P. Miller, vice-president," and ask you if you had a conversation with that man on or about that date?

A. I did. [3950]

Q. At the time you had that conversation did you deliver to Mr. Miller or to the National Gas and Oil Corporation a copy of the injunction of January 25, 1952?

A. He said he had a copy of it.

Q. He said at that time that he had a copy of it?

A. Yes.

Mr. L. E. Lyon: I will offer in evidence this letter of January 15, 1954, as defendants' exhibit next in order.

The Court: Received in evidence.

The Clerk: Defendants' HP in evidence.

* * *

Redirect Examination

By Mr. Scofield: [3951]

* * *

Q. (By Mr. Scofield): What, if anything, did you have to do with the sending of the \$2.50 letter, Exhibit JJJ? [3952]

* * *

The Witness: I came to Kansas City and discussed with you, with the merits that called to sending the letter out.

Q. (By Mr. Scofield): What do you mean by the "merits"?

(Testimony of Jesse E. Hall, Sr.)

A. I mean the information that caused us to arrive at the decision of sending the letter out.

Q. What was the information you gave me?

A. Well, it had been gathered together over some four or five months and I just called on Mr. Franklin, who is one of our past representatives, and they had a stock of B and W stuff hid away in a warehouse across the street, they had some calling cards or fly sheets, I would call them, the size of filing cabinets, stating the method of cementing and they had the numbers of the cement method on the back.

* * *

Q. (By Mr. Scofield): Are those cards in evidence? Are those fly sheets in evidence, Mr. Hall?

A. They are in evidence.

The Court: In this case?

The Witness: Yes, sir. [3953]

The Court: Those are the ones that are as big as what? Did you say they were as large as filing cabinets?

The Witness: They are as large as a filing cabinet, paper size.

The Court: At that time had B and W started stamping the invoices?

The Witness: Yes, sir.

The Court: You knew about that?

The Witness: I knew about that.

The Court: Was that part of the merits of sending the \$2.50 letter?

The Witness: That is part of it. When you lay

(Testimony of Jesse E. Hall, Sr.)

the invoice to the customer and the method, and the salesmen are calling upon the customer and telling them that this is what B and W has got to sell, and and that all of this is the patent number, and I found that sales—— [3954]

* * *

Q. (By Mr. Scofield): What I was asking, Mr. Hall, was what your reasons were for instructing me to send the \$2.50 letter.

* * *

A. Well, not particularly due to the fact that the method upon this paper and the stamping of the invoices and calling on the customers to tell them that was the method—that was the principal reason.

* * *

The Court: Just a moment. I would like, as long as we are on this subject, to ask, how did you happen to choose \$2.50? Was that because it was somewhere near four times 60 cents?

The Witness: No, sir. Knowing that the cost of selling this material and running it, which runs about 55 per cent, and the cost of manufacturing, I had taken the profit, a portion of the royalty that they would have and a portion of the profit.

The Court: So that the 65 cents that B and W was stamping on the invoice was too low? [3955]

The Witness: No, they were sending out, collecting their profit in the \$6. They were only just setting a 60 cent rate and telling the customer they

(Testimony of Jesse E. Hall, Sr.)

are not charging them any more. What they really were doing, they were saying, we are merely informing you that we have got this patent and this is the steps of it. It was all over. I don't believe there is an oil field that is drilling that you don't see those boxes with that all over it. And I haven't found a filing cabinet of any purchasing agent all over the country but what they have the same thing in it. And it was something that we just had to overcome because within three months we lost four of our district salesmen who went to them. They couldn't combat the idea of having the patent number on the thing, that it covers all the steps that we were using.

The Court: You felt you had to use some of the same methods?

The Witness: Something or other to call attention to them, to cause them to stop.

The Court: On the old theory of the way to fight fire is with fire? [3956]

* * *

Q. (By Mr. Scofield): Are the fly sheets that you have referred to in your previous answer the Exhibits 209 and 210 which I put before you?

A. Yes, sir.

Q. Now what were these filing cabinets you referred to, were those the boxes in which the B and W scratchers were sent?

A. No, the filing cabinets in the oil companies' offices, wherever the purchasing agent is, why they have these [3957] that have been given to the pur-

(Testimony of Jesse E. Hall, Sr.)

chasing agents all over the country and their superintendents, where they have their offices with catalogs or anything that contains this method set out here.

Q. Have you seen those in those filing cabinets?

A. Yes, sir, I have.

The Court: You really are referring to something about letterhead size?

The Witness: Yes, sir.

The Court: Standard letterhead size?

The Witness: Yes.

The Court: Eight and a half by eleven inches?

The Witness: Yes.

The Court: Is that correct?

The Witness: That is correct. [3958]

* * *

DEPOSITION OF CHRIS NELSON

having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Scofield:

Q. Please state your name.

A. Chris Nelson.

Q. Talk to him— A. Yes.

Q. And talk slowly so that he can get it.

Where do you reside, Mr. Nelson?

A. Taft, California.

Q. What is your age?

A. I will be 70 October 30th.

Q. How are you occupied at the present time?

(Deposition of Chris Nelson.)

A. Well, I am unemployed.

Q. What is the state of your health?

A. Well, fair, I would say. It is not too good.

Q. Have you had any difficulty lately?

A. In health?

Q. Yes.

A. Oh, about a year ago I had a stroke, a little over a year ago.

Q. What was your occupation prior to the time that you had this stroke? [3834-2]

A. I was a machinist, doing machine work.

Q. Where did you learn your trade, Mr. Nelson?

A. In Albuquerque, New Mexico, with the Santa Fe Railroad.

Q. What year was that?

A. 1899 I started.

Q. How long were you with the Santa Fe there and learning your trade?

A. Four years apprenticeship.

Q. Did you stay with the Santa Fe after you had served your apprenticeship? A. No, sir.

Q. Where did you go from Albuquerque, and what was it, 1901 or '2 or '3?

A. 1903 I went to Chickasha, Indian Territory, Oklahoma now.

Q. That was before Oklahoma had been admitted as a state? A. Yes.

Q. Who did you work for?

A. Rock Island, Pacific Railroad—Chicago, Rock Island and Pacific.

(Deposition of Chris Nelson.)

Q. How long?

A. Oh, I think I worked there possibly nine months, something like that. [3834-3]

Q. As a machinist? A. Yes, sir.

Q. Who did you work for next, any personal friend?

A. No, I worked for the Frisco Railroad, the San Francisco, or whatever it is.

Q. Where? A. At Springfield, Missouri.

Q. What year was that?

A. That was in 1903.

Q. And still working as a machinist?

A. Yes, when I am able.

Q. In the railroad shops?

A. No, I followed oil tool work for several years past.

Q. After you had worked for the Frisco in Springfield, Missouri, in 1903, where next did you work?

A. I went back to the Santa Fe Railroad at Winslow, Arizona.

Q. In the Santa Fe shops? A. Yes, sir.

Q. Working as a machinist? A. Yes, sir.

Q. How long did you remain at Winslow?

A. I can't just remember. It was about—

Q. An approximation is good enough. [3834-4]

A. It was a very short time. It was probably six months that I worked there.

Q. What was the occasion of your moving around so much during this early period?

A. Well, I don't know, I guess it was more or

(Deposition of Chris Nelson.)

less trying to get experience, and most of the young men in those days as apprentices would be talked to to get out, into other shops and gain more knowledge of the trade and experience, mostly.

Q. What was your age when you completed your apprenticeship in Albuquerque, New Mexico?

A. I think I was 20, just past, 21 or 22. Let's see, I started June 5th.

Q. June 5th of what year?

A. 1899, and four years later I was awarded a diploma for serving my apprenticeship. Was bound in the trade by the Santa Fe Railroad to finish my trade, and I had to serve the four years because they held out, oh, a small amount of money each day for four years, out of your wages.

Q. What was the reason for that, to keep you employed? A. To bind you to the trade.

Q. Now, we have got you down to Winslow, Arizona, some time in 1903 or 1904. [3834-5]

Mr. Lyon: We have not established yet when he was in Winslow, Arizona.

Q. (By Mr. Scofield): When were you in Winslow, Arizona?

A. It was in 19—let's see, I think it was December, 1904.

Q. 1904?

A. Let me see, yes. I am pretty sure that is the date, although I may be off, though, but it is pretty close.

Q. Where did you go from Winslow, Arizona?

A. Los Angeles, California.

(Deposition of Chris Nelson.)

Q. How were you employed there?

A. By the Southern Pacific Railroad, here in Los Angeles.

Q. As a machinist? A. Yes.

Q. Where were the shops located?

A. Down on the east side of Los Angeles, where they are today.

Q. How long did you remain with the Southern Pacific here in Los Angeles?

A. About five or six months, something like that.

Q. Where did you go next?

A. I was sent to Bakersfield, the same railroad.

Q. Southern Pacific?

A. Southern Pacific. [3834-6]

Q. Do they have shops there? A. Yes.

Q. You were still employed as a machinist?

A. Oh, yes.

Q. How long did you remain with the Southern Pacific here in Los Angeles?

A. About five or six months, something like that.

Q. Where did you go next?

A. I was sent to Bakersfield, the same railroad.

Q. Southern Pacific? A. Southern Pacific.

Q. Do they have shops there? A. Yes.

Q. You were still employed as a machinist?

A. Oh, yes.

Q. How long did you remain at Bakersfield?

A. Oh, until 19—with this same S. P. Railroad?

Q. Yes, if you did remain with them.

A. Until 1906, I believe it was, the latter part of 1906.

(Deposition of Chris Nelson.)

Q. Then where did you go?

A. Winslow, Arizona.

Q. How long did you remain in Winslow?

A. Oh, about a year, I think I was at Winslow—not Winslow; Douglas, Arizona, pardon [3834-7] me.

Q. Douglas, Arizona?

A. Pardon me on that.

Q. Still with the Southern Pacific?

A. No, that would be the—it was not the Southern Pacific. It was a branch line or extension of the Rock Island Railroad, and it was the El Paso and Southwestern Railroad, which is now owned by the S. P.

Q. You were still working as a machinist in their shops? A. Yes, sir.

Q. From Douglas, Arizona, where next did you go? A. Oh, I don't know, let's see.

Q. What year was that you were in Douglas?

A. I left there in 1907, and I took a trip around the country a little bit, and I just forgot now where I landed the last time. I think I landed in Bakersfield eventually.

Q. You came back to Bakersfield?

A. Yes, my home. My father and mother were living and lived in Bakersfield.

Q. Did you go back to work in Bakersfield?

A. No, not at that time I did not.

Q. Where did you go back to work next after you left Douglas in 1907?

A. Oh, that was Bakersfield. [3834-8]

(Deposition of Chris Nelson.)

Q. You came back to Bakersfield and went to work?

A. Yes, after a trip around a little bit, you know, I finally landed in Bakersfield.

Q. Who did you go to work for in Bakersfield?

A. Southern Pacific.

Q. About what year was that?

A. It was, oh, along in 1907, the latter part, or first part of 1908, I believe.

Q. How long did you continue to work then in Bakersfield after you took this employment in 1907 or 1908?

A. Oh, I didn't stay very long. I was sent for to come down to the S. P. at Globe, Arizona.

Q. You were in Globe, Arizona, for a while?

A. Yes, a short time.

Q. Then where did you go?

A. I can't just remember. I can't remember all those dates so far back.

Q. I do not care so much about the dates if you will just give me the sequence of the places where you worked. A. Yes.

Q. From Globe where did you go?

A. From Globe I think I went back to Bakersfield, if I remember right.

Q. You went back to Bakersfield?

A. I worked there several times, and I think my [3834-9] father had sent for me to come back. He was working in Bakersfield.

Q. What trade was your father in?

A. He was a machinist also.

(Deposition of Chris Nelson.)

Q. Did you have any brothers or sisters?

A. Yes, there was seven boys in the family and two girls, none living today.

Q. Were any of the boys machinists?

A. But one sister—one sister living.

Q. Were any of the boys machinists besides yourself? A. Yes, four.

Q. Four besides yourself? A. Yes.

Q. Well, after you got back to Bakersfield say in 1908 or thereabouts— A. Yes.

Q. —from Globe, how long did you continue there, or where next did you go from Bakersfield? Maybe you can remember that. After you had been in Globe, Arizona, and you came back to Bakersfield where next did you go, do you recall?

A. Let me see. Oh, my father was in—had changed to go to work for the Missouri Pacific Railroad at Osawatomie, Kansas.

Q. Who had any shop at Osawatomie? [3834-10]

A. Missouri Pacific Railroad.

Q. You worked there for a while?

A. Yes.

Q. Was your father there? A. Yes.

Q. Then where did you go after you left Osawatomie?

A. I worked in—just a moment, I worked in some of these places twice, so I can't—it is pretty hard in the later years to remember how all the incidents happened, but from Osawatomie I can't just remember the next place I did go.

Q. When did you get back to Bakersfield on the next occasion?

(Deposition of Chris Nelson.)

A. The next occasion I came back there in—I was there in 1911.

Q. 1911? A. Yes.

Q. How long did you remain there after 1911?

A. Remained in Bakersfield?

Q. Yes.

A. Just a short time. I was in a—I had a small machine shop there, rented it, doing machine work and some automobile work, and I wanted to come back in the oil fields and I went up to Taft to the Standard Oil Company.

Q. What did you do during the first World War, during [3834-11] 1916, 1917 and 1918?

A. I worked up in San Francisco, in the shipyards.

Q. In the shipyards? A. Yes.

Q. Doing what?

A. Well, I was on submarines for a while, building submarines, helping to, and doing general machine work, marine work, you know.

Q. You remained there during the first World War?

A. No, I didn't stay all the time. I had enlisted in San Francisco, and I stayed there until, I think it was September, I forget now. My wife can tell you more about the date. What was that date?

Mrs. Nelson: I am not on the stand.

Q. (By Mr. Scofield): She is not on the stand.

A. I can't remember just the date, but, anyway, I think 1918, with the flu epidemic, I had a touch

(Deposition of Chris Nelson.)

of flu, and my wife and girl was with me, and so I left there after that flu epidemic.

Q. You were married prior to the first World War? A. Yes.

Q. What year were you married? A. '15.

Q. 1915? A. Yes. [3834-12]

Q. What service did you enlist in during the first World War? A. Motor transport.

Q. Motor transport?

A. The machine end of it.

Q. After you had worked in the shipyards in San Francisco where did you go from there?

A. I came back to Bakersfield.

Q. You came back to Bakersfield?

A. Really a sort of a home place for us.

Q. How long did you remain in Bakersfield after 1918?

A. Well, I remained in and around Bakersfield, in fact, in Kern County for, oh, quite a while. I can't just remember now.

Q. Do you know where you were in 1933, 1934 and 1935? A. Yes.

Q. Where were you? A. Bakersfield.

Q. What were you doing?

A. Doing machine shop work as a machinist.

Q. With whom?

A. Well, I had other—Had several different jobs in there also.

Q. How do you know that you were in Bakersfield during 1934, for instance, and 1935? How can you fix that circumstance? [3834-13]

(Deposition of Chris Nelson.)

A. Well, there was a period of depression that we always have in mind, you know, and there wasn't much work around the country, and I was in Taft and had applied for a job at Bakersfield, and got a job in there with the California Sales and Service Company.

Q. What business were they in?

A. They were in the general sales and machine shop and welding work.

Q. What work did you do for them?

A. Oh, general machine shop work, running the machines or repairing.

Q. This you say was California Service and Sales or Sales and Service?

A. California Sales and Service.

Q. Do you remember when you went to work for that organization?

A. Yes, I think I can. It was, I think it was the—in '34.

Q. 1934? A. Yes, '34.

Q. How long did you remain with them?

A. I remained with them—I can't just remember.

Q. Was it a matter of a year or six months?

A. Yes. [3834-14]

Mr. Lyon: I object to prompting the witness.

The Witness: It was less than a year.

Q. (By Mr. Scofield): Less than a year?

A. Yes.

Q. Then who did you go to work for?

(Deposition of Chris Nelson.)

A. I went to work for the Standard Pipe & Supply Company.

Q. Who was the head of that organization?

A. Well, the yard—it was a secondhand sales yard, used equipment yard—it was owned by a man by the name of Abie Fishfader, Abraham Fishfader.

Q. Did he have a machine shop there in Bakersfield?

A. No, he bought a machine shop that was set up in McKittrick belonging to the Standard Oil Company. This shop was out at a little—you might say outer end of McKittrick, a little place called Reward.

Q. Reward? A. Reward, California.

Q. Where is McKittrick, California, with reference to Bakersfield?

A. McKittrick is—if Taft is 16 miles it would be, oh, 25 miles, I guess. I don't know the exact distance.

Q. Is it near Taft?

A. 16 miles from Taft. [3834-15]

Q. 16 miles from Taft? A. Yes.

Q. Well, now, what was your work about this machine shop that you started working in? I believe you said that Mr. Fishfader was the proprietor?

A. Well, I oftentimes had quite a bit of work to do there in the mechanical line. He had trucks and cars, and so forth, in his business, and he also had a machine, a hydraulic machine for straightening pipe which had to have some attention sometimes, and I had to work on that pipe straightener one

(Deposition of Chris Nelson.)

time and make some parts for it, and we got discussing about a machine shop, and he said he was going to buy a machine shop, and did buy this one in Reward and moved it in.

Q. Who moved it in?

A. Well, I helped part of it. My brother was hired, also a machinist, to disassemble it at McKittrick and set it up in Bakersfield.

Q. What is your brother's name?

A. Walter.

Q. You went with your brother over to McKittrick?

A. No, I didn't go over there at all. My brother took it all down alone and moved it in, and I helped fix the machinery and so forth and so on.

Q. Did you help set it up in [3834-16] Bakersfield? A. Yes, both of us set it up.

Q. How long then did you work for Fishfader in this machine shop that I believe you designated—by what name was the shop known as?

A. The shop name—when I went in there I went in as a—we struck up a little partnership of—I would do the work and we would split the profits to us.

Q. Who were the other partners?

A. He and myself, Mr. Fishfader and myself.

Q. You were two partners?

A. Yes, on the machine shop part I would get half of what—of the net, you know, that I would do, but other than that, if I was working on my own salary I got a salary of \$10 a day.

(Deposition of Chris Nelson.)

Q. Who paid you? A. Mr. Fishfader.

Q. How long did you continue this partnership arrangement with Mr. Fishfader in Bakersfield?

A. Oh, not so very long. It all depended on the business conditions and the work coming in the shops, you know, and the time that he couldn't feel like he could pay me and, you know, maybe not anything would come in for profits, so we really dissolved and cut that part out.

Q. My question was: how long did it continue, do you recall? [3834-17]

A. Oh, it probably continued a year and a half or two years.

Q. Starting in when, starting what year?

A. In about '34.

Q. You continued with him until when?

A. Well, I think it was 1930—I think it was about '37, the latter part of '37, if I remember right.

Q. That would be a matter of three years?

A. About three, yes.

Q. How do you fix this date when you started to work with him? Was it by this McKittrick business?

A. Yes, from what it was—the business had started to pick up a little bit.

Q. What business?

A. The oil field business and machine shop business, and when I went to him it had picked up somewhat, and I thought it was a good idea to go there and get in it, you know, in a way for myself, too,

(Deposition of Chris Nelson.)

you see, and then it dropped. The business in the oil fields and in the machine shop business all depends on the work, you know that is to be had around the country.

Q. What I am trying to find out is how you fix the date when you first started in business with Mr. Fishfader. You say it was some time in 1934?

A. Yes. [3834-18]

Q. How are you able to fix that date, is it just from recollection or is it—

A. No, I have to—it was a matter of a little guesswork on that part. I can't, you know, just remember dates and all that so far back, but it is—

Q. How are you able to fix the date when you terminated your arrangement with Mr. Fishfader some time in 1936 or 1937?

Mr. Lyon: That is objected to as a misstatement of the witness' testimony. He said it was in 1937, not anywhere near 1936.

The Witness: How did I happen to terminate, you say?

Q. (By Mr. Scofield): No, I say how do you fix the date when you terminated your partnership with Mr. Fishfader? How are you able to establish that date?

A. Well, let me see, it takes a little time to think all that up. I have got to think back on all these different shops, and I can't just remember that, how I fix those dates.

Q. Do you recollect any circumstance, either in

(Deposition of Chris Nelson.)

your family or any other circumstance that you recall the period when you worked for Mr. Fishfader?

Mr. Lyon: I object to the leading of the witness. The witness has already stated he can't remember.

The Witness: I can't just remember. [3834-19]

Q. (By Mr. Scofield): Have you any recollection of meeting Mr. Hall during the time that you were working for Mr. Fishfader?

Mr. Lyon: That is objected to as leading, grossly so.

Q. (By Mr. Scofield): Do you have any recollection of that?

A. Oh, I had a recollection of meeting Mr. Hall from the—he used to come into the California Sales & Service when I was working there.

Q. What would he be coming in there for?

A. It was a machine shop and welding shop, and for repairs to his drilling job, and so forth.

Q. Did you ever do any work for Mr. Hall?

A. Yes.

Q. What sort of work?

A. Oh, it is hard to remember, just various things brought in that I would repair.

Q. Do you recall anything he ever brought in that you repaired?

A. That is pretty hard to say, so many things to be repaired around rigs. I wouldn't remember that.

Q. Did you ever make anything for Mr. Hall there in the shop? A. In which shop?

(Deposition of Chris Nelson.)

Q. In Mr. Fishfader's shop.

A. Oh, yes. [3834-20]

Q. What did you make for him?

A. I made some scratchers for him.

Q. What were the scratchers, can you describe what they were?

A. Well, the part that I made was taking a casing collar and boring it out or reaming or drilling out, whichever you want to say, to slip over the o.d. of the pipe.

Q. How many of those did you make?

A. six.

Q. Do you know what you made them out of?

A. Yes.

Q. What did you make them from?

A. I made them out of five and three-quarters couplings, casing couplings, or collars.

Q. Do you know where you got those couplings from? A. Mr. Hall furnished them.

Q. Did he bring them into the shop?

A. Yes.

Q. Did he give you any instructions as to what he wanted done with those casing collars?

A. Yes.

Q. Relate as well as you can what instructions he gave you with regard to working on these couplings when he brought them into the shop.

A. Well, he verbally gave me the order, so to speak, [3834-21] to make these up, drill them out and machine them to— instructed me to fit the casing loose, and to drill them to the—to drill holes to fit a

(Deposition of Chris Nelson.)

certain wire which was about a sixteenth of an inch in diameter, piano wire.

Q. Did he give you any of the wire?

A. Yes, a sample.

Q. Where did he tell you to drill these collars or casing couplings?

A. He told me—to drill them?

Q. Where did he say to drill them?

A. They were to be drilled right over the slot that was put on the inside. I put them on the inside of each one.

Q. What did he tell you to put a slot on the inside for, did he tell you?

A. Yes, to accommodate the wire and hold it, so that they could lock the wire on the inside.

Q. Now, after he brought these couplings into your shop what did you do?

A. Well, I proceeded to bore them out and machine them, ready for the wire.

Q. Were these couplings threaded on the inside or not?

A. Yes, all couplings are threaded on the inside, screw couplings. [3834-22]

Q. Did you bore out these threads?

A. I bored the threads out, and would be large enough to go over the o.d. of the pipe, which was five and three-quarters.

Q. After you had bored out the inside of the couplings what did you do then to the couplings?

A. Put the slots in for the wire.

(Deposition of Chris Nelson.)

Q. Won't you explain just what these slots were?

A. It is a grooved slot to accommodate whatever the purpose it is for.

Q. The grooved slots were made on the inside or outside of the coupling? A. On the inside.

Q. How many of these grooved slots were made on each coupling? A. Three.

Q. Did he tell you to make three? A. Yes.

Q. You have indicated that you drilled holes in these couplings? A. Yes.

Q. Where were the holes drilled?

A. Well, the holes are drilled to match the grooves on the inside, drilled from the outside to the inside, naturally. [3834-23]

Q. What do you mean "to match the grooves on the inside"?

A. The wire that was to be inserted through the hole and crimped to go into the slot to hold it.

Q. Mr. Hall explained this to you?

A. Yes, sir.

Q. You have indicated in one of your previous answers that these holes were drilled through the couplings to match the groove? A. Yes.

Q. Each one? A. Yes, sir.

Q. How many of these holes were there into each groove?

A. Well, I was told to drill them about an inch apart or inch and a half, or such a matter, an inch apart is about what it was, and putting the holes in each of the three slots through from the outside to this in the slot.

(Deposition of Chris Nelson.)

Q. How were these holes spaced around the couplings?

Mr. Lyon: That is objected to as leading.

Q. (By Mr. Scofield): Go ahead and answer the question.

A. They were spaced certain distances around the coupling, naturally; center punched on each outside diameter of the coupling to match the hole or slot on the inside of the coupling. [3834-24]

Q. Now, let us assume that you have received these couplings from Mr. Hall, and you have bored them out, as you have indicated you have, bored the threads out of the inside of the couplings, and you have made these three grooves, as you have indicated in your previous answers, around the inside of the coupling. Now, won't you explain to me just how you put the holes in into the couplings, how you went about putting the holes in and how the holes were drilled by you in each one of these couplings?

A. Yes.

Q. Can you just set it up as you did in the shop, and explain how you drilled these holes?

A. Well, in machining the coupling on the inside with the three grooves, the space between each slot on the inside of the coupling, I took the same center of each one of these slots and put a fine line on the outside to match that inner slot.

Q. That is, the groove on the inside?

A. Yes, to match the groove on the inside.

(Deposition of Chris Nelson.)

Q. You had a line around the outside of the periphery— A. Yes.

Q. ——of the coupling? A. That's right.

Q. To match the groove on the inside? [3834-25]

A. Yes.

Q. Now, what did you do?

A. Then I spaced the holes and drilled the holes on a drill press.

Q. How did you go about spacing those holes?

A. Well, in very accurate cases, where you have to be accurate, you generally use a pair of—

Mr. Lyon: He didn't ask you what you generally used, he asked you what you did.

The Witness: All right, I spaced those holes with just a rule or a scale, measuring scale.

Q. (By Mr. Scofield): Then what did you do after you got the holes spaced, did you mark them?

A. That is marking them, you see.

Q. All right. A. That is marking.

Q. Where were these marks?

A. They were right in this here line that I drew on the outside.

Q. On the outside? A. Yes, sir.

Q. Then what did you do after you had marked each one of these lines around the outside of the coupling?

A. And then you have to drill the holes, so naturally you go to a drill press, a machine that spins a small [3834-26] drill, or any drill, as fast as the job requires and then you proceed to put this coupling that you are drilling in what they call a

(Deposition of Chris Nelson.)

V block, and then you proceed then to drill, and you can just rotate your coupling from each hole that is marked to be drilled, and proceed with your drilling and drill through.

Q. Was the hole drilled completely through the coupling?

A. Just through the wall of the coupling.

Q. Through one wall? A. Yes.

Q. What size did you make that hole?

A. Oh, just a trifle larger than the wire to be inserted.

Q. How did you know what size to make it?

A. I had a piece of the wire.

Q. Who gave you that wire? A. Mr. Hall.

Q. Did he give you enough wire to fill all the holes or just one piece of wire, or how much wire did he give you?

A. No, he gave me quite a piece of wire, quite a length.

Q. What do you mean by that?

A. A coil, it comes in a coil. I don't [3848-27] know how much would be in it, maybe 40 feet.

Q. Well, you selected a drill the size of the wire?

A. Yes.

Q. Or larger?

A. Well, it would be large enough to accommodate the wire to go in there fairly free, and they have instruments for gauging wire and also for gauging drills, so you select the drill that is the least bit larger to slip through. My mouth is so dry I can't hardly talk.

(A discussion was had off the record.)

(Deposition of Chris Nelson.)

Q. (By Mr. Scofield): About how many holes were there on each one of these lines that you made on the outside of the coupling?

A. For each groove?

Q. For each groove, about how many holes were there around the coupling?

A. Oh, there was probably 20, I can't remember the amount.

Q. After you had drilled these holes opposite the different grooves in the coupling then what did you do? You have still got it on the V block or the drill press, I guess, when you were drilling these holes. Then what did you do after that?

A. Well, then I would insert the wire and take a [3848-28] punch or a cold chisel and slip the wire through into the slot and bend it over into the slot and get it fastened and batted the slot over the wire to hold it in.

Q. Now, on these first six couplings that Mr. Hall left with you did you put the wires in them or not?

Mr. Lyon: We object to that statement with regard to the number. No such number has been testified to.

Q. (By Mr. Scofield): Didn't you say in one of your previous answers how many of these couplings Mr. Hall left with you? A. Yes.

Q. Do you recall that he left six?

A. Yes, yes, sir.

Q. You do have a definite recollection—

A. Yes.

(Deposition of Chris Nelson.)

Q. ——that he left six?

A. Yes, it is really an unusual amount and type of a job that I never had done before.

Q. Did you put the wires in these six couplings after you had drilled them?

Mr. Lyon: That is objected to as leading.

Q. (By Mr. Scofield): Do you have any recollection about that? A. On these? Yes, I did.

Q. You put the wire in these six [3848-29] couplings? A. Yes.

Q. After these couplings were finished what did you do with them then?

A. I delivered them out to the Weed Patch District where he was working.

Q. Did you deliver them to the well where he was working? A. Yes.

Q. Who did you deliver them to?

A. Well, somebody at the well, and I don't remember now who it was, and he knew about it, so I just left them there.

Q. What time of day did you deliver them out there?

A. Well, it was after my working hours, which was—I got through in the shop about, oh, some time after 5:00 or such a matter.

Q. What kind of a vehicle did you take them out there in?

A. In my car, a Hudson, a Hudson coupe.

Q. When did you buy that Hudson, do you know?

A. In '36.

(Deposition of Chris Nelson.)

Q. 1936? A. Yes.

Q. What part of 1936?

A. Let's see, '35. [3848-30]

Q. What part of 1935?

A. I don't remember the date, the month, even the date.

Q. When did you sell it?

A. I sold it about, oh, two or three months back.

Q. This year? A. Yes.

Q. Had you been using it ever since?

A. Mostly, yes.

Q. Did you ever see these cylinders that you made for Mr. Hall after you delivered them to the well? A. No.

Q. You never saw them after that? A. No.

Q. Did you ever see them put on any pipe?

A. No.

Q. You never saw one of those after you delivered them to the well? A. No.

Q. When next did you ever hear, if you did, about a device of this sort?

Mr. Lyon: That is objected to as leading, assuming a fact not in evidence.

Q. (By Mr. Scofield): After the manufacture or the making of these first cylinders for Mr. Hall did you ever [3848-31] have occasion to make up any like them? A. Yes.

Q. When?

A. Oh, about two years and a half ago or so, such a matter.

(Deposition of Chris Nelson.)

Q. Just explain the occasion of your making up any of those cylinders on another occasion.

A. Mr. Hall's son George called me up from Bakersfield, I being in Taft, and asked me if I had—if I would remember making up the scratchers for his father, and I told him; yes, it was quite a long time back, but I remembered it, I remembered making them. So then he asked me if I would make one like the ones I made. He asked me if I could do so, and I said yes, I thought I could, and did make up one.

Q. Did you talk to Mr. George Hall on the phone? A. Yes.

Q. Did you see him at that time?

A. I don't remember. I don't believe I did see him, not face to face, no.

Q. Your only contact with him was over the phone? A. That's all at that time.

Q. After he talked to you on the phone what did you then do?

A. Well, I proceeded to make this scratcher. I had [3848-32] to make a sleeve, and I couldn't find a collar that was five and three-quarters for the proper dimensions, but I had a forging, a steel forging that was suitable with some material to be removed from also the inside and outside, and I made it up to the best of my knowledge of the way I had made those first six.

Q. Did anybody help you, that is, did anyone give you any instructions as to how to make this up?

A. This one? No. You mean this last one?

(Deposition of Chris Nelson.)

Q. Yes, the last one. A. No.

Q. After you had made up the scratcher what did you do with it?

A. Well, it was made up and I inserted the wires in it, and a man that works for Mr. Hall, Mr. Moody, came and picked it up and paid for it at the time.

Q. What did he pay you, do you recall?

A. Well, it was paid the company I worked for there, I worked for at that time in Taft, The American Oil Tool Company, in Taft.

Q. About how long ago was that?

A. Oh, it is two years and a half back.

Q. Did you see Mr. George Hall when you delivered this to Mr. Moody? Did Mr. George Hall come with Mr. Moody to get the scratcher? [3848-33]

A. No, Mr. Moody came there alone to get it.

Q. Have you seen Mr. George Hall prior to his death some two or three years ago? A. No.

Q. When did you see him?

Mr. Lyon: That is objected to as leading, grossly so.

Q. (By Mr. Scofield): When did you see Mr. George Hall last, do you recall?

A. Oh, it was back along in those days when I worked in Bakersfield, I can't just remember.

Q. When you were working for Fishfader?

A. Well, yes.

Q. I put before you a cylindrical object, and ask you whether or not you can identify it.

A. Yes, I can.

Q. What is it?

(Deposition of Chris Nelson.)

A. It is the so-called scratcher.

Q. What scratcher is that, do you know?

A. Well, I don't know, only I was ordered to make it, to make that very scratcher by Halls.

Q. By which one? A. By George Hall.

Q. Can you identify this scratcher as the one you made two years ago or so?

A. Yes, I can. [3848-34]

Q. Will you look it over very carefully, and see whether or not you can identify it?

A. Yes, I can positively identify it.

Q. How are you able to identify that as the scratcher that you made for Mr. George Hall?

A. Well, I made that on what you might call a light lathe. We also have a heavy lathe in that same shop, but I remember I—it was very close—this here was to this. The forging I made it out of was close to the size that I had finished that to, and it was all practically fine, what we call fine thread work, fine feed work on a small lathe, and if I had made that on a larger lathe it would have taken larger cuts, and so forth and so on.

Q. This particular scratcher appears to have been painted with aluminum paint? A. Yes.

Q. Who did that, do you know? A. I did.

Q. You did that?

A. Yes, at least it was painted aluminum when it left the shop there because we—many new pieces of machinery and equipment that we make and repair, they are generally cleaned up and sometimes painted, not always but many times.

(Deposition of Chris Nelson.)

Q. In regard does this particular [3848-35] scratcher resemble those that you made for Mr. Hall back during the time you were working in Mr. Fishfader's shop?

Mr. Lyon: That is objected to as calling for a conclusion of the witness and as incompetent, irrelevant and immaterial.

The Witness: Well, I think it is exactly the same, because that is all I can remember about it.

Q. That is your best recollection—

A. Yes.

Q. —of how the first ones were made?

A. Yes.

Q. How did you know how to put these wires into this particular scratcher?

A. Well, Mr. Hall told me how to put those in in the very first place, on the very first ones that were made, how to put them in. I understood how they were to be put in.

Q. How did you know the length of the wires, that is, did he instruct you as to that, or was that some of your own—

A. No, George Hall told me to make them about three inches long.

Q. That is, the selection of the length of the wires was not your particular idea?

A. No, it wasn't. [3848-36]

Q. Did Mr. Hall ever tell you how these were going to be used, or not?

Mr. Lyon: Objected to as calling for hearsay.

(Deposition of Chris Nelson.)

The Witness: No, he never did. It didn't interest me anyway.

Q. (By Mr. Scofield): Do you know anything about oil production? A. Very little.

Q. Do you have any hesitation whatsoever in identifying this as the scratcher that you made for Mr. George Hall?

Mr. Lyon: That is objected to as leading and suggestive, incompetent, irrelevant and immaterial.

The Witness: It is the same one.

Q. (By Mr. Scofield): It is the same one?

A. Yes.

Q. Did you know any of the people who were working with Mr. Hall at Bakersfield on this well that he was drilling?

Mr. Lyon: That is objected to as leading and suggestive, also assuming a fact for which there is no evidence.

The Witness: Well, I don't anyway, only his son is the only man I know, connected with Mr. Hall.

Q. (By Mr. Scofield): Which sons? [3848-37]

A. I know Dub or George.

Q. Did you know any of the other boys?

A. Just by sight is all. [3848-38]

* * *

Q. Mr. Nelson, you had a stroke about a year ago, is that correct? A. Yes, sir.

Q. How did that stroke affect you?

A. It left my left side—my hand mostly is both-

(Deposition of Chris Nelson.)

ered, and a certain amount of numbness on my face on the left side.

Q. It also affected your memory, too, didn't it?

A. Well, possibly, I can't say.

Q. That is, it partially paralyzed your face and your left side? A. Yes.

Q. How long did that condition of partial paralysis exist?

A. Oh, I was in the hospital for about two weeks, and then when I came home, why, I couldn't work or do anything like that, and I would just lay around, and my condition seemed to improve from then on until now, you might [3848-39] say.

Q. You haven't been able to do any work—

A. No.

Q. —of any kind since then? A. No.

Q. In fact, you tire very rapidly at the present, time don't you? A. Yes, I do.

Q. How long did you work in the oil fields as a machinist in all of your different jobs?

A. In all—you mean in all my total time in the oil fields only, you mean?

Q. Yes.

A. Well, I would have to stop and add up a little bit there. I just don't—offhand it would be in the neighborhood of, oh, I would say 30 years.

Q. 30 years? During that 30 years you made a lot—

A. Maybe a little less than 30 years. I wouldn't just say for sure 30 years.

Q. During that period of time of approximately

(Deposition of Chris Nelson.)

30 years as a machinist you fabricated for different people a lot of different structures, didn't you?

A. Yes, sir.

Q. From the beginning of that 30 years until the time of your stroke about a year ago? [3848-40]

A. Yes, that would be up to then, yes.

Q. Can you tell me what some of those other particular devices were?

A. Of what, you mean?

Q. Well, you made for other individuals.

A. Oh, I have manufactured and worked on most all of the used tools today in the oil business.

Q. And you have made different models for different individuals of those tools over this period of 30 years?

A. Not so many models. I have made tools to be used, you know, used tools.

Q. I did not mean models in the sense they were demonstration models, I mean they were actual tools, but they were what you thought were new tools at that time; isn't that correct? They were new in the sense you had never seen anything like them?

A. Some I had worked on.

Q. How many altogether has there been over that period of 30 years?

A. Well, there was ever so many tools, tools used in the oil industry, improvements and patented tools, you know, that I never probably—I don't have any occasion to see or to do any work on them.

(Deposition of Chris Nelson.)

Q. I am talking about the ones that you did work on.

A. That I did work on? Oh, I worked on all— [3848-41] practically all the drilling tools and oil pumping equipment, you know, such as pumps and sucker rods and polish rods, and so forth and so on, that goes with the pumping of oil wells.

Q. Can you offhand tell me the construction of any one of those structures you worked on, say 20 years ago?

A. 20 years ago? Could I ask your name?

* * *

Q. (By Mr. Lyon): A new type of tool.

A. New type of tool?

Q. That was new to you.

A. Well, I could name this scratcher, for one.

Q. I am asking you about any other?

A. Any other? Yes?—tools or equipment either?

Q. That is right.

A. There would be one tool that the Shaffer Tool Company used to make, was a rod turner, that was new when I worked on it.

Mr. Scofield: That is the Shafter—

The Witness: Shaffer Oil Tool. [3848-42]

Q. (By Mr. Lyon): What was the particular tool?

A. It was a device for rotating the rods in pumping.

Q. How many of those tools did you make?

(Deposition of Chris Nelson.)

A. Oh, offhand, I would say I made part of probably 25 or more.

Q. All the same? A. Yes.

Q. Could you duplicate that structure right now?

A. Yes, I could.

Q. What was the particular structure?

A. The structure was the device that had a hole through the whole assembly—the whole tool had a hole all the way through it, that meant through the body, and then this body was threaded with a coarse threaded screw, coarse lead.

Q. What were the dimensions of the device?

A. Well, the dimension of the screw was about, I would say around three or three and a half—three and a half, I would think.

Q. You think it could have been—

A. Well, I can't remember sizes, you know; after working with so many sizes I can't remember all sizes.

Q. You can't remember the size of the hole through the device, can you?

A. To a fine limit tolerance that—I don't know that [3848-43] I could just give you the exact size.

Q. You can't recall the particular shape of the body in all its particulars, can you?

A. I can pretty close. Come to think about it, I can tell you the size of the hole also, approximate size. It was to accommodate what they call a polish rod.

Q. You were recollecting then what, the then current size of a polish rod; is that correct?

(Deposition of Chris Nelson.)

A. Yes.

Q. And fixing the size of the hole through that device by what you recollect the polish rod was then?

A. Well, they are generally about a one and one-eighth or maybe larger, so that the hole would have to accommodate slipping over that.

Q. By deduction backwards the hole would have to be the size of a one inch and an eighth, or a larger size polish rod? A. Yes, sir.

Q. Depending upon which one it was?

A. Yes, sir.

Q. There was more than one size polish rod, too, wasn't there? A. Yes, sir.

Q. By that you can't determine the size, can you, whether it was this inch and an eighth or the larger size [3848-44] polish rod?

A. I wouldn't know that.

Q. Can you remember precisely when that device was made, within a matter of three or four or five years?

A. Yes, I believe it was along—I don't know when the Shaffer brought the idea out, but I know when I worked on it.

Q. Can you establish that in your mind other than by guessing within a matter of two or three years? A. Yes, sir.

Q. How?

A. Well, I was working for Shaffer then.

Q. You were working for the Shaffer Oil Tool Company? A. In Taft, yes.

(Deposition of Chris Nelson.)

Q. So that you know it was during the period of time you were working for him? A. Yes.

Q. How long were you working for him?

A. Oh, I don't remember how long I did work for Shaffer's. I worked for them two different times.

Q. Do you know which time it was?

A. Yes, the first time I worked for them.

Q. You don't know how long it was?

A. Probably a year, or such a matter. [3848-45]

Q. You have made other devices for Mr. Hall, haven't you?

A. No, I don't know whether I have made any other device. I have worked on other tools.

Q. Over what years?

A. Well, it was in the early 1934, I would say.

Q. And on any other type? A. Yes.

Q. When? A. In '35.

Q. When else? A. What else, you say?

Q. When else? A. In 1935, I would say.

Q. When else besides 1935?

A. Oh, 1935? In—about two and a half years back. That would be in 1948, wouldn't it?

Q. Any others? A. No.

Q. You never did any other work for Mr. Hall except in 1934, 1935 or 1949?

A. Yes, I worked in there about two years and a half back, the last time I did anything for them.

Q. Was it in 1949 or 1948?

A. I don't remember the date. It was just pretty recent, [3848-46] too.

(Deposition of Chris Nelson.)

Q. You can't remember whether this work you did for Hall was in 1948 or 1949?

A. To be positive, I couldn't say exact the date.

Q. You don't know what part of the year it was?

A. It was in the forepart of the year, probably middle part of the year.

Q. So that it was either the forepart—

A. It would have been the middle part of the year, I would say.

Q. Either the forepart or middle part of 1948 or 1949? A. Yes, sir.

Q. That is as close as you can fix this last work you did for Mr. Hall? A. Yes, sir.

Q. In this last work you did for Mr. Hall, you talked to nobody at any time about what you were to do, except a telephone conversation with George Hall, who told you to make a device like you had made for him before; is that correct?

A. That's right.

Q. Nobody told you the size of the wires, the length of the wires, how they were fastened, the size of the collar or anything else? [3848-47]

A. No.

Q. Nobody told you that the wires should be three inches in length?

A. Only Mr. George Hall told me that.

Q. How much more did Mr. George Hall tell you? A. That's all.

Q. He never told you how the wires went through, how they were secured to the collar?

(Deposition of Chris Nelson.)

A. Only gave me a sample of the wire to make it.

Q. He gave you in 1948 or 1949 a sample of this wire? A. Yes.

Q. You had no recollection of what the size or shape of that wire was before that, did you?

A. Yes, I knew about what the size was.

Q. About? A. Yes.

Q. But you did not know whether that was a sixteenth, three thirty-seconds or five sixty-fourths or something of that character, did you?

A. Well, I don't know exactly. I don't have any wire gauge, those dimensions, but it would be on the wire gauge, it would be around a sixteenth of an inch.

Q. That is what you used now, is it not?

A. Yes, sir. [3848-48]

Q. But before that you could not have said whether it was a sixteenth, three thirty-seconds, five sixty-fourths or what the wire there was, could you? A. Before when?

Q. Before Mr. George Hall brought you the sample here in 1948 or 1949.

Q. Well, it would be very close to the one-sixteenth.

Q. What do you mean by "very close"? Is three thirty-seconds very close to one-sixteenth?

A. No, it would be more close than that. It would ba according to the wire, the gauge measurements. You see, a piano wire comes in certain gauges, wire gauge measurements, so it must be to the wires, so—

(Deposition of Chris Nelson.)

Q. They come in wire sizes, don't they?

A. Yes, they—

Mr. Scofield: Let him finish his answer.

The Witness: And not having too much experience with that, other than making coil springs with piano wire and other spring steel wires, I wouldn't exactly know to a fine degree what the exact size of that wire is, you see.

Q. What sizes do piano wires come in?

A. Oh, I guess they come in many sizes, I don't know.

Q. All up and down the wire scale?

A. I imagine they do, I don't know exactly.

Q. You have no idea of what sizes they [3848-49] are? A. No, not all, no.

Q. They are measured in numbers and not in units of fractions of an inch, aren't they?

A. I wouldn't be positive, but I think it is measured in wire gauge measurements.

Q. Wire gauges? A. Yes.

Q. Not in fractions of an inch?

A. It could be, I guess, in fractions, too, in their catalog book, but I don't know for sure. I wouldn't have any—

Q. That is, you are familiar with the fact that wire drills, for example, the number set on wire drills range from size 1 to 72, don't they?

A. Well, I imagine they do, yes.

Q. And 1 is larger than 72, is it not?

A. It would be coarser, yes.

Q. It is a heavy— A. Heavier wire?

(Deposition of Chris Nelson.)

A. Yes.

Q. You have no idea of what the wire gauge number was of the wire that you say you used in 1935? A. What number I used in 1935?

Q. Yes.

A. No, by wire measurement I don't think that I [3848-50] would know the number.

Q. In fact, you don't know what the wire gauge number is of the wire that is in this model, Exhibit 2, in front of you, do you? A. No.

Q. That wire was just handed to you by Mr. George Hall? A. Yes.

Q. Either in 1948 or 1949, when you made this structure? A. Yes.

Q. Was Mr. George Hall around any of the time that you made this structure?

A. I can't remember whether he was, I don't believe so.

Q. He must have been there one time, when he handed you the wire, wasn't he?

A. Yes. You mean during the time I was making this?

Q. Yes.

A. Oh, he was there to give me the wire.

Q. Now, on how many other times was he there?

A. I could not say.

Q. You could not say? You could not say whether it was one, three, four, two or six, could you? A. No. [3848-51]

Q. And at the times he was there he discussed the structure of this Exhibit 2 with you, didn't he?

(Deposition of Chris Nelson.)

A. No.

Q. He never discussed it at all? A. No.

Q. He never came into the shop where you were working? A. No.

Q. Where did he hand you the wire?

A. Right there at the shop, at the front end of the shop.

Q. Where you were working?

A. Yes, but I didn't happen to be working on it when he gave me the wire.

Q. How long had you known Mr. George Hall?

A. Since approximately '34, 1934, possibly '33. I don't know just exactly the year, during that period.

Q. Have you any children? A. One girl.

Q. Is she married? A. Yes.

Q. To whom? A. To Mr. J. J. O'Brien.

Q. Who is Mr. O'Brien?

A. He is an accountant for the Standard Oil Company [3848-52] in Taft.

Q. How much did Mr. Hall pay you for making this model, Exhibit 2?

A. I don't know. What he paid me for it—my time card, working time card went into this office where I worked, and the clerk figures it up, and I don't know exactly what the price was.

Q. What was the rate? A. Sir?

Q. What was the rate? A. The ring?

Q. The rate.

Mr. Scofield: You mean the rate per hour?

(Deposition of Chris Nelson.)

The Witness: Oh, the rate per hour is—

Q. (By Mr. Lyon): What was it?

A. Was—

Q. On this particular job?

A. I think three and a half an hour, I believe, machine shop rate.

Q. How many hours did you spend on it?

A. Oh, I would think about four and a half hours or five, I am not positive.

Q. All at one time?

A. Practically, yes, sir.

Q. What do you mean by [3848-53] "practically"? A. Well—

Q. Did you just start in and finish the device?

A. No, there was—I had another small job that it happened that I had to do that day, and didn't take very long to do it.

Q. You did this all on the one day?

A. Yes, sir.

Q. Mr. Hall was there that day, wasn't he?

A. No.

Q. He handed you the wire that day, didn't he?

A. I don't think—no, he didn't hand me the wire. I didn't start on it that very day he handed me the wire. It was, I think, the following day that I started on it.

Q. Did Mr. Hall hand you a sketch or drawing of any kind to show what he wanted made?

A. No.

Q. Nothing? A. No.

(Deposition of Chris Nelson.)

Q. He did not sit down and say "Now, you remember this"?

A. No, he didn't. That was taken up before I ever started in on it.

Q. Before you started on it he told you that?

A. Yes, sir—he didn't tell me anything.

Q. He told you the size, didn't he? [3848-54]

A. The size of what, of this particular—

Q. The size of the collar or the sleeve?

A. Five and three-quarters.

Q. He told you that? A. Yes.

Q. What else did he tell you besides the size of the sleeve and the size of the wire?

A. Nothing.

Q. Did he tell you how many wires there were in it? A. No.

Q. You know how many wires are in it now?

A. I do not, unless I count them. I do not really know that.

Q. Do you know how many wires there were in the structure which you say you made in 1935?

A. Not exactly, no.

Q. Do you know whether there is the same number of wires in this Exhibit 2 as there was in this structure that you made in 1935?

A. Approximately the same.

Q. What do you mean by "approximately"?

A. Well, I made a number, maybe—I will say six or ten, six to ten different, probably, more or less.

Q. Did Mr. George Hall before you started on

(Deposition of Chris Nelson.)

this tell you also how many wires there were in that device you [3848-55] made in 1935?

A. No, sir.

Q. Did he tell you how far they were apart?

A. Not in this particular one, he didn't know.

Q. When he gave you the wire and the size and told you the size of the collar he didn't tell you how the wires were spaced?

A. You mean with the very first ones I made?

Q. I mean this one.

A. This one? No, he told me nothing, and this is made from my own knowledge of how I made the other one—the others.

Q. You have told me that several times, you told me he told you nothing. A. Yes.

Q. Now, you tell me that he told you the size of the sleeve and the size of the wires. Now, what I want to know, Mr. Nelson, is actually fully what he told you.

A. Well, just he wanted me to make a duplicate of the scratchers that I made for him back in 1935.

Q. Didn't he identify that scratcher in any way?

A. Well, only by the size, five and three-quarters was all.

Q. And also by the size of the wires?

A. The sample of wire was handed to me by his son. [3848-56]

Q. That is, George Hall?

A. George Hall, yes.

Q. The same George Hall that told you the size of the sleeve that he wanted?

(Deposition of Chris Nelson.)

A. Yes, he did say the size.

Q. All right. Now, how did he identify what he wanted you to make, the size of the wires, position of the wires and manner of mounting of the wires?

A. The only thing he told me was the size of the scratcher he wanted made, to duplicate the ones I had made previously.

Q. And the size of the wire?

A. He handed me the size of the wire, yes.

Q. And that is all he told you?

A. That's all.

Q. Isn't it very possible that your recollection of exactly what happened then is a little foggy?

A. Oh, I don't know, I don't think so hardly.

Q. It could be, though?

A. It could be, probably.

Q. Not only did he tell you the size of the wires and size of the sleeve but he told you the length of the wires, too, didn't he? [3848-57]

* * *

A. That's right.

Q. And he told you the size of the sleeve, didn't he? A. Just the size of the sleeve is all.

Q. And he told you the length of the wire, too, didn't he?

A. He told me the length to cut these wire off on.

Q. To three inches?

A. Yes, approximately.

Q. And you can't remember what else he told you?

(Deposition of Chris Nelson.)

A. No, I don't know any other details that he told me at all.

Q. You would not say he didn't tell you any others? A. About what?

Q. About the structure?

A. No, he didn't tell me. That was up to me to make that. [3848-58]

* * *

Q. (By Mr. Lyon): During your 30 years of machine shop work in the oil tools you made a lot of devices for different people in and around Taft and Bakersfield, didn't you? [3848-59]

A. Yes, sir.

Q. Can you recall two of them now, this scratcher and the rod turner at Shaffer?

A. Yes.

Q. Can you recall any others?

A. Would that be tools on the market or anything, you mean?

Q. I don't know whether they went on the market. I am asking you if somebody came in and they gave you a sketch or a drawing or something and told you to make some particular device, that happened many times, didn't it?

A. Yes, it does.

Q. Can you recall any of them besides this Shaffer structure and this so-called scratcher?

A. Yes, in the last shop I worked, the last place—

Q. When was that?

Mr. Scofield: Just a minute, let him finish.

(Deposition of Chris Nelson.)

The Witness: —we make many kinds of tools, and make a drilling bumper sub.

Q. (By Mr. Lyon): When was that?

A. Oh, we have been making those for the past three years, four years, something like that.

Q. That is, that is what you were making when you ceased to work?

A. No, I wasn't—I worked on many other things. [3848-60]

Q. That was during the last three years—

A. Yes.

Q. —you worked?

A. Oh, yes, that's right.

Q. But beyond that you can't remember any other structure that you may have made 18, 17 or 20 years ago, except you say this—

A. Well—

Q. —particular scratcher and that Shaffer rod turner?

Mr. Scofield: I object to that, unless you specify in that question whether you mean a new device or some of the old devices which he has worked on. Evidently the witness, in answering these questions of yours, has thought you meant some of the old devices he worked on.

Mr. Lyon: No, he hasn't thought any such thing.

Mr. Scofield: I want him to understand the question before he answers.

The Witness: Yes.

Q. (By Mr. Lyon): I mean devices that were then new to you.

(Deposition of Chris Nelson.)

A. Oh, that were then new to me?

Mr. Scofield: Now, these devices you are asking about are devices that were made when?

Mr. Lyon: As I said, 17, 18, 20 years [3848-61] ago.

Mr. Scofield: He has already identified one which he made for the Shaffer Company. Do you understand the question?

The Witness: Yes. I worked on many tools that are products of the Shaffer Tool Company at that time.

Q. (By Mr. Lyon): That is, while you were working for Shaffer during that one year?

A. Yes.

Q. But other than that you can't remember anything?

A. Oh, I can—well, we made thousands of flanges for the Government during the World War, the last World War, and many other—we made—

Q. Those were pipe flanges, weren't they?

A. Yes.

Q. During this second World War?

A. We also made, oh, upwards of 12, I will say 11-inch valves for the Government that went on marine work, boats, bronze valves.

Q. This Shaffer rod turner, that also developed into some difficulties, and that was later recalled to your mind, too, was it not?

A. You mean—in what way was it in difficulties?

(Deposition of Chris Nelson.)

Q. You were asked concerning that quite a number of years later, weren't you?

Mr. Scofield: I object to that as indefinite. Asked [3848-62] what?

Q. (By Mr. Lyon): You were asked as to the construction of that rod turner and when you made it quite a number of years later?

A. Yes, I made it quite a few years ago.

Q. You were asked quite a number of years after that when you had made it, how you had made it, and, in fact, that became the subject of a controversy, didn't it?

A. Not to my knowledge. I don't know of any controversy that it ever got into.

Q. Someone came back quite a number of years later and said, "You made such-and-such a device back in 1934 or 1935," didn't they?

A. Somebody came to me?

Q. Yes. A. No, I don't know of anybody.

Q. You don't know of anybody?

A. No, I don't.

Q. Was that a patented structure?

A. To my knowledge, I don't know. Mr. Van Stone was the foreman and was the fellow that instructed us how to make it.

Q. How long did you make that rod turner?

A. Oh, there was about, I would say six other machinists, and so on, in the shop, and we all worked on [3848-63] those.

Q. I see. That was a matter of production that you were making during that year?

(Deposition of Chris Nelson.)

A. Yes, sir.

Q. That you were with Shaffer?

A. Yes, sir.

Q. That was the most outstanding job you were making during that one year you were working for Shaffer?

A. No, they had other—they had lots of other repair work, and so forth, to do.

Q. I mean of production items that you were making for them that was the principal production item that you did machine work on?

A. No, we made lots of flanges and hydraulic nipples and other equipment that goes on Christmas trees, flanges, and so forth.

Q. Did you make more of any other device than you made of the rod turners during that year?

A. Yes.

Q. What? A. Well, it would be flanges.

Q. Flanges?

A. High duty—heavy duty flanges that goes on a well, you know, when it is finished.

Q. Those were just turned flanges? [3848-64]

A. Turned and threaded flanges and making hydraulic nipples.

Q. Either standard flanges and hydraulic nipples, just standard production jobs at that time?

A. They were with Shaffer. They really capitalized on heavy duty equipment for bringing in oil wells.

Q. Well, your answer—

A. Specialized, I mean.

Q. Your answer to the question is yes, that they

(Deposition of Chris Nelson.)

were standard production items? A. Oh, yes.

Q. Did you only talk to George Hall about this so-called scratcher in 1948 or 1949?

A. I talked to him over the telephone.

Q. Did you talk only to him?

A. That's all.

Q. You never talked to Mr. Jesse Hall?

A. No.

Q. You never talked with anyone else, "Do you remember that scratcher I made?"

A. The only man that I talked to about the scratcher was George Hall at that time.

Q. You did not talk to Mrs. Nelson about it at that time? A. No, I don't think so. [3848-65]

Q. You did not talk to anyone else?

A. No.

Q. Except to George Hall? A. That's all.

Q. Who furnished this forging that you say you made this Exhibit 2 out of?

A. The company I worked for then was the American Oil Tool Company at Taft.

Q. How long before this telephone call from Mr. George Hall had it been that you had seen Mr. Hall?

Mr. Scofield: To identify the Hall, you mean—

The Witness: Mr. George Hall?

Q. (By Mr. Lyon): Yes.

A. I can't remember when I saw him after that.

Q. Or before that?

A. That I had seen him before that?

Q. Yes.

(Deposition of Chris Nelson.)

A. I had not seen him, to my knowledge, before that.

Q. You ever had seen him?

A. Well, only many years ago.

Q. He called you on the telephone?

A. Yes, sir.

Q. What did he say?

A. He wanted to know if I remembered making the scratchers for Mr. Hall in Bakersfield. [3848-66]

Q. Did he tell you when?

A. Well, I think we discussed the time, and in the conversation I said that it would be pretty hard, I would have to remember——

Q. Didn't he tell you that——

Mr. Scofield: Let him finish.

The Witness: I would have to remember back a ways to refresh that in my memory how it was made, you know.

Q. (By Mr. Lyon): Didn't he tell you the scratchers that you made for Mr. Hall in 1935, Mr. Nelson? A. Didn't he tell me what?

Q. Didn't he say he wanted you to make a scratcher for him like the ones you made for Mr. Hall in 1935? A. That's right, yes.

Q. And that is how the date was fixed, was it not? A. For 1935, you mean?

Q. Yes, he told you he wanted you to make one like you had made for him in 1935?

A. Well, I imagine that would be the way it was fixed.

(Deposition of Chris Nelson.)

Q. Mr. Nelson, these wires are pushed through the hole in the sleeve, and I am referring to Exhibit 2— A. Yes.

Q. —and bent over on the inside?

A. Yes. [3848-67]

Q. And then you take a cold chisel and you push the sides of that groove in for the purpose of clamping the wires; is that correct?

A. That's right.

Q. I notice in the upper row, upper with respect to the tag having Exhibit 2 on it, that there are some extra holes drilled in that with no wires in them. Did you put those extra holes in there?

Mr. Scofield: Do you want to look at it?

The Witness: No, I just—have you got a match? I broke some drills in there.

Q. (By Mr. Lyon): Here?

A. I want to—does that go through? There is—

Q. Your explanation is that—

A. My explanation—

Q. Your explanation for that is that you broke drills off in those holes? A. Yes, sir.

Q. And then moved over and drilled another hole? A. That's right.

Q. Did you do that when you made this device in 1935, you say? A. Break drills?

Q. Yes.

A. Oh, you could, yes. That happens quite often. [3848-68]

Q. Well, did you? A. Yes.

(Deposition of Chris Nelson.)

Q. You broke a lot of drills off in trying to drill the holes?

A. I don't say I broke a lot, because I was very careful, and had a better way to drill that I had out here.

Q. In 1935 machines for drilling were better than they were in 1948 or 1949?

A. No, I would like to explain, the smaller the drill the faster you may speed up your drill, and less chance of breaking the drill.

Q. In this structure of Exhibit 2 these wires extend sideways, up, down, or approximately straight out. Is that the same as it was in 1935?

A. It could be, yes, because the wire is coiled up, and cut it—it had a little bend in it, and it must be perfectly true all the way through in line to come out true with the hole.

Q. So that those wires in that device could be turned in any direction and were turned in any direction when you made it?

A. They would be maybe slightly, just according to the bend of the wire.

Q. And the wire was bent?

A. Well, it is coiled and each would have a little [3848-69] bit of a bend in it.

Q. You did not try to straighten the wire out?

A. No, I didn't do that.

Q. So the wire was bent?

A. Slightly curved, I would say.

Q. And, curving around, there was no effort

(Deposition of Chris Nelson.)

made by you in any of these 1935 devices to determine which way that curve went, was there?

A. No.

Q. That is, it either went up or down or sideways, with reference to the center of the sleeve?

A. It could go any way.

Q. Any way?

A. As far as my part of it.

Q. You are a mechanic, and with this wire secured the way it is in Exhibit 2, and you bend the wire in any direction, that bend is concentrated right at the point that the wire goes through the sleeve, isn't it?

A. It would have to be very tight in order to bend right there. It would have to be firm.

Q. It is firm, isn't it?

A. Well, it is supposed to be, yes, but if there is any lost motion, why, then you would have that to contend with.

Q. If you continuously bend that wire the wire would [3848-70] eventually break off at the point it goes through the hole, wouldn't it?

A. I imagine it would.

Q. Did you make this scratcher for George Hall in 1935?

A. Did I make what scratcher, this?

Q. The ones you say you made in 1935, did you make those for George Hall at that time?

A. I made them for Mr. Jesse Hall.

Q. Who told you what to make in 1935, George Hall or Jesse Hall? A. Jesse Hall.

(Deposition of Chris Nelson.)

Q. You did not discuss the matter at all with George Hall in 1935?

A. I might have. I don't know, I don't remember.

Q. In fact, you can't remember whether it was George Hall or Jesse Hall you discussed the matter of the scratcher with in 1935, can you?

A. In making the scratchers in 1935?

Q. Yes.

A. I talked with Jesse Hall about those.

Q. And not with George Hall at all?

A. Well, he would be in the shop now and then, but I don't know whether I talked to him about scratchers or what. [3848-71]

Q. At that time in 1935, did you make a guide for Mr. Hall?

A. What sort of a guide would that be?

Q. A spring steel guide?

A. For what, what sort of—

Q. For an oil well guide, to put on a pipe.

A. You mean to put on pipes?

Q. Yes.

A. Well, I don't just remember. I might have. It is pretty hard to say.

Q. You can't remember that, though?

A. Well, I made lots of guides in my time around there, but I can't remember particularly that one.

Q. You can't remember now?

A. I can't remember any particular one.

Q. You can't remember any particular one?

A. No, but I made lots of them.

(Deposition of Chris Nelson.)

Q. And you made lots of them of different constructions, too? A. Yes.

Q. But you can't remember the construction of any of them? A. Of guides?

Q. Yes. A. No, I can't. [3848-72]

Q. You can't remember whether in 1935, in connection with this same well that you say you delivered these scratchers to, that you made spring steel guides for Mr. Hall, either of them, either George or Jesse?

A. I can't remember whether I did. Is that a guide for pipe you are speaking about?

Q. Yes.

A. To lead it in the hole, or centralize—

Q. To centralize it in the hole.

A. No, I don't think I ever made any centralizer guides.

Q. You don't think you ever made any?

A. No, I made them, but not for Mr. Hall.

Q. Did you do any other work for Mr. Hall, in 1935?

A. Mr. Hall used to come in the shop where I worked, and I possibly did, I imagine I did.

Q. Did you do any other work for Mr. Hall, in 1934?

A. I really think I did do some work for him.

Q. Did you make any guides, any pipe guides for him in 1934?

A. I can't remember making any.

Q. You can't remember what the work was you did in 1934? A. It was general repair work.

(Deposition of Chris Nelson.)

Q. In 1936 did you do any work for [3848-73] Mr. Hall? A. '36? No.

Q. Did you do any work for Mr. Hall in 1937? A. No.

Q. 1938? A. No, I didn't.

Q. Or at any other time besides 1934 and 1935? A. No.

Q. You state you were working in 1934 for the California Sales & Service. Do you remember how long you worked for that company?

Mr. Scofield: Did you get the question?

The Witness: Oh, no. I didn't get it.

(The question was read by the reporter.)

Mr. Scofield: Do you understand the question?

The Witness: Yes, I do understand it, but I don't remember how long I worked there.

Q. (By Mr. Lyon): Do you remember when you went there? A. I went there in '33, 1933.

Q. In 1933? A. 1933, as I remember.

Q. You don't remember whether you worked there one, two, three or four years?

A. No, I can't remember the amount of time that I worked there for them.

Q. Do you know whether you were working for California [3848-74] Sales & Service when you state you made this structure, these so-called scratchers?

A. I didn't make any of the scratchers when I was with the California Sales & Service. I didn't make any scratchers there.

(Deposition of Chris Nelson.)

Q. Did you know Mr. Hall in Arizona?

A. No.

Q. You never met him there?

A. No, I haven't.

Q. Was Mr. Hall recommended to you by anyone that you know of in 1934 when he came to see you in Bakersfield? A. No, he wasn't.

Q. Did you have mutual friends at that time?

A. Did I have mutual friends with—

Q. Mr. Hall?

A. Oh, only just passing acquaintance is all.

Q. Is that true in Arizona, also?

A. I didn't never know him in Arizona.

Q. You never knew anyone he knew in Arizona?

A. Oh, I might have, but I don't know.

Q. You don't know? A. No. [3848-75]

* * *

CLAY MILLER

called as a witness by and on behalf of the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Clay W. Miller.

* * *

Direct Examination

By Mr. Scofield:

Q. Mr. Miller, where do you reside?

A. Artesia. [3988]

(Testimony of Clay Miller.)

Q. What is your business? A. Welding.

Q. What type of welding?

A. Heliarc, bit tipping, specialized work.

Q. Do you have anything to do with the oil industry in connection with your welding business?

A. Yes, sir.

Q. In what respect?

A. Well, retip drilling bits, oil well drilling bits; we do numerous jobs in the shop relative to the oil industry.

Q. Where did you reside in 1933-1934?

A. Bakersfield.

Q. What business were you in at that time?

A. Welding.

Q. What type of welding?

A. Strictly oil field welding.

Q. What business were you engaged in in 1935?

A. I went to work for the Vernon Tool Company August 1, 1935.

Q. What is the business of the Vernon Tool Company?

A. Manufacture and repair of various oil tool equipment.

Q. How long did you continue in the employ of the Vernon Tool Company?

A. Until January, '36. [3989]

Q. And what business did you start at that time?

A. I went to work for Myers Core and Drilling Company.

Q. Do you know Mr. Jesse E. Hall, Sr.?

A. Yes, sir.

(Testimony of Clay Miller.)

Q. How long have you known him?

A. Since 1929.

Q. Did you know him when you were living in Bakersfield? A. Yes, sir.

Q. Did you know of any oil wells that he was drilling there around Bakersfield?

A. Yes, sir.

Q. Where?

A. The Weed Patch we called it.

Q. Do you know the name of the well that he was drilling in the Weed Patch district?

A. The only thing I ever knew that well by was the Bristol well.

Q. Where was it located with respect to the town of Bakersfield?

A. North of what we called the Four Corners in the Weed Patch, which is where the restaurants and businesses, or whatever it is, was.

Q. Were you ever out on the lease?

A. Numerous times. [3990]

Q. Were you there when he was drilling the well? A. Yes, sir.

Q. Do you know what a centralizer is?

A. Yes, sir.

Q. Did Mr. Hall ever talk to you about any work he was doing on a centralizer? A. Yes.

Q. When? A. In August of 1935.

Q. What did he tell you that he was doing?

A. I went out to the well and he was telling me about having a model made, or had one made,

(Testimony of Clay Miller.)

rather, and he drove me or drove him up to the Hall Machine Works and he showed me the model.

Q. Where was the model in the Hall Machine Works?

A. Well, as you go in the door, I remember, it was on a bench or table or something right inside of the door to the right.

Q. Describe the model as you recollect it.

* * *

The Witness: It was mounted on a pipe and it had two bands, steel bands, with spring steel blades attached from [3991] one band to the other holding them a distance apart of 12, 15, 16 inches—I didn't measure it—and some bristles sticking out of the top of one of the bands, wire bristles, and some lugs welded on the side of these steel blades.

Q. And when you saw this device at the Hall Machine Works did you take it along with you or did you leave it there?

A. No, it was left there.

Q. Did you ever see it on any other occasion?

A. Never.

Q. Have you testified about this model previously in this case? A. In an affidavit.

Q. At the time that you gave testimony with respect to the model did you at that time make a sketch?

A. Make a sketch? I remember I made several sketches.

Q. Did you make a sketch of this particular model? A. I believe so.

(Testimony of Clay Miller.)

Q. I put before you a sketch marked for identification in this case as Plaintiff's Exhibit 50, and ask you if you can identify it?

A. (Examining exhibit): I can.

Q. What are the objects that appear on that sketch?

A. As previously described, two bands, steel blades, the lugs and the wires out the top. [3992]

Q. Did you only see this model of the device which is shown in the sketch on the one occasion?

A. That is all.

Q. Did you ever discuss the matter with Mr. Hall at any other time besides the time that you went to see it at the Hall Machine Works?

A. I did.

Q. First tell us what the discussion was there at the Hall Machine Works with respect to this [3993] model.

* * *

Q. (By Mr. Scofield): Did you have any discussion with Mr. Hall at the time that you went to the Hall Machine Works to see this model?

A. Sure. He described or was telling me about his object and what the thing was supposed to do. Word for word, or either to remember that discussion is past me.

* * *

Q. (By Mr. Scofield): Was anybody else there with you at the Hall Machine Works?

A. No, there wasn't.

Q. And about when was this?

(Testimony of Clay Miller.)

A. In August, 1935. [3994]

Q. Give the conversation as you recall.

A. All I recall of the conversation was the lugs on the blades, which I had never saw or never remembered, why was it. I built lots of centralizers, straight-blade centralizers, and saw those lugs on the outside of the springs, and that was something new to me and I naturally asked what was the purpose; and he said so as that they were on an angle that they hit the side of the well and rotate the centralizers.

Q. Had you yourself made centralizers prior to the time that you saw this model? A. Oh, yes.

Q. And you knew of their use?

A. I have welded them on pipes, just straight blades, steel springs on pipe.

Q. Did Mr. Hall tell you how this particular model was to be used?

* * *

A. Other than the purpose for the lugs in the centralizer. He didn't have to explain—

The Court: Just what was said?

The Witness: That is all I remember of the conversation. [3995]

Q. (By Mr. Scofield): I notice in your sketch that there appears to be some wires sticking out from the upper collar. A. That is correct.

Q. Also what is your recollection as to the structure of that collar?

(Testimony of Clay Miller.)

A. Other than that there was wire bristles sticking out of that collar, I don't remember the construction.

Q. What type of wire bristles were they?

A. They were spring steel.

Q. And how were they fastened to the collar, do you recall?

A. The collar was on a pipe and I couldn't—and the wires went through holes, drilled holes. I couldn't see the back or how they were held in or anything like that.

Q. Do you recall how the wires extended from the collar?

A. The best I can tell, they were just sticking out of the collar, I would say, horizontally angled one way or the other off of horizontal.

Q. This sketch that you made, does that depict the scratcher or a model, as you call it?

A. Yes, sir.

Q. Do you know what a scratcher is?

A. I do now.

Q. Did you know in 1935?

A. No, sir. [3996]

Q. Did you see a scratcher of any sort around Mr. Hall's well in 1935?

* * *

A. Not prior to seeing this model. Later I had, yes.

Q. (By Mr. Scofield): When was that?

A. That was several months later, on the well,

(Testimony of Clay Miller.)

out at the well at the Weed Patch, Bristol No. 1 or whatever a number it was called. There were some bands with some wires sticking out of it. I don't know how many, five, six, or four. I don't know—laying on the pipe, by the pipe rack there. It wasn't a rack; it was mounted up on eight by eights, ten by tens, or twelve by twelves. He just built it up and rolled a pipe on. And at the corner of one of those wooden places these things was laying there. I had never saw anything like it. I picked it up and looked at it, examined, put it up on the well to see. Mr. Hall, he wasn't there, so I left.

Q. Who was at the well at the time?

A. I couldn't remember that.

Q. Did you know any of the other men who were working on the well besides Mr. Hall?

A. Oh, yes. Yes.

Q. Who were they?

A. Well, his brother, Clyde Hall, worked out there; [3997] his son, George, worked out there; his son, John, and Elmer and Junior.

Q. How do you fix the date when you saw these scratchers at the Bristol No. 1 well?

A. Due to the fact that I only worked six months for Vernon Tool, and knowing the date I started and the date I stopped, and it was right after I went to work that I saw the model, and there was quite a lapse of time in there before I saw those things out at the well, as I testified, two or three months. I don't know.

(Testimony of Clay Miller.)

Q. Do you remember what the occasion was for your visit to the well at that time?

A. Well, I was a salesman for Vernon Tool Equipment, doing soliciting work. He was drilling an oil well. He is a friend of mine and I tried to see if I could do some business.

Q. Describe the object in detail, as you recall it, that you picked up at the time that you went out and saw these objects at the well.

A. It was a steel band with a bunch of wires sticking out through drilled holes.

Q. Did you determine at that time how the wires were fastened to the band, as you have called it?

A. I picked it up and examined it.

Q. Did you discuss this object or these objects with Mr. Hall after you had seen them out [3998] there?

A. No, I never did. I never even knew what they was being used for or give it another thought. I thought it was a funny-looking thing and dismissed it from my mind.

Q. At the time that you previously testified in this case did you draw a sketch of how these wires were fastened?

A. I believe so. I drawed several sketches.

Q. I show you a sketch which has been marked for identification as Plaintiff's Exhibit 51 and ask you if you can identify it? A. Yes, sir.

Q. I notice at the top of this sketch there is a notation, "shape of wire." What did you mean by that? A. The way the wire was bent.

(Testimony of Clay Miller.)

Q. And at the left or just below this notation there is an object which has been drawn which has been designated "wire." Explain the structure of that wire, if you will.

A. It is marked "wire retainer."

Q. I am referring to the one marked A.

A. A, that is the wire bent to approximately that shape or similar to it.

Q. What were you trying to draw when you drew that object which is marked A?

A. Draw the wire so I could designate how it was put together.

Q. And where was this wire when you saw it out there? [3999]

A. It was sticking through these couplings.

Q. Now, you have also drawn something that you have marked B; what is that?

A. Just a round circle which is wire or was a retainer. It was strung through the part here to hold it in the coupling.

Q. And you are referring to the loop in the object which is marked A? A. Yes, sir.

Q. Now, what is the object that you have marked C and designated "coupling"?

A. A cross-section there showing the wires going through and the wire that is strung through that to retain it.

Q. Now, you have marked the lower figure which is marked No. 3 with certain identifying letters, A, B and C? A. That is correct.

Q. Will you state what they are?

(Testimony of Clay Miller.)

A. A is the wire, B is the retaining wire, and C is the coupling.

Q. And did you intend to have the numbers and objects correspond to the same numbers that appear on the objects above? A. Yes, sir.

Q. On how many occasions, or did you at any time after the visit when you first saw these scratchers ever see them again? [4000]

A. Not that I recall. I don't believe so.

Q. Did you ever see that mounted on the pipe?

A. No, sir.

Q. Did you ever weld any of these devices on pipe for Mr. Hall? A. No, sir.

Q. Did you ever do any welding for Mr. Hall?

A. Prior to going to work for Vernon Tool, yes.

Q. Did you see these devices at any time prior or when you were doing this welding?

A. No, sir.

Q. And prior to the time that you went to work for Vernon? A. No, sir.

Q. There has been offered here in evidence a tool, Exhibit 272-A. Does that resemble in any respect the scratchers which you saw on the Bristol lease in 1935?

* * *

A. That is not exactly the way I remembered it.

Q. (By Mr. Scofield): How does it differ; that is, how does 272-A differ from the devices? [4001]

* * *

A. The wire stuck out similar when you picked

(Testimony of Clay Miller.)

up the collar, but, as I remember, the wires were looped and the wire retainer was put in a V-shape of clearance inside the coupling. These seem to be stuck through there and wrapped over or something, to hold, and that was not the case as I remember.

Mr. L. E. Lyon: By "these," you mean in this device in front of you?

The Witness: How is that?

Mr. L. E. Lyon: When you said "these seem to be stuck through, not as I remember them," were you referring to the device in front of you?

Mr. Scofield: 272-A.

The Witness: Yes, the wires sticking out of the coupling, I say. [4002]

* * *

Q. (By Mr. Scofield): What is your recollection as to the fastening of the wires in the scratchers that you saw on the Bristol lease?

The Court: Why call them a "scratcher"? You are just inviting the same objection. Call it a device.

Mr. Scofield: A device.

A. The coupling had a groove cut inside. The wires were bent similar to this drawing and stuck through the various places around.

The Court: Similar to the drawing—

The Witness: This drawing I mean here, yes.

The Court: And that is Exhibit?

Mr. Scofield: 51.

(Testimony of Clay Miller.)

The Court: Very well.

A. And the ring wire went through these loops and these wires, hairpin shaped, was strung out like that, and that would hold them rigid against the drill hole, and the [4003] wires in the back would keep them from being drove out. That is the only thing I can remember about the thing.

Q. (By Mr. Scofield): Is the structure you have explained shown in the sketch, Exhibit 51?

A. Yes.

Q. For identification? A. That is right.

Mr. Scofield: I offer in evidence, your Honor, the sketch, Exhibit 50, to be marked for identification.

The Court: You have referred to it as Exhibit 51.

Mr. Scofield: There are two, your Honor.

The Court: There are two sketches?

Mr. Scofield: Yes, sir.

The Court: Are you offering the Exhibit 51?

Mr. Scofield: Yes, sir; I am offering them both, Exhibits 50 and 51. [4004]

* * *

Cross-Examination

By Mr. L. E. Lyon:

* * *

Q. You state that you knew that Mr. Hall was in the summer of 1935 trying to build a centralizer?

A. No, sir. I said I saw a model that he had built.

(Testimony of Clay Miller.)

Q. And that model had lugs on it which you have shown in a sketch, Exhibit 50, and that is the particular element of that model that you recall, isn't it? A. I distinctly recall the model.

Q. You distinctly recall the lugs, don't you?

A. Yes, sir; I do.

Q. And those lugs you have drawn on Exhibit 50 and noted, "Lug A, lugs on blades," and you have drawn a separate [4005] side view of the blades in Exhibit 50, have you not? A. Yes, sir.

Q. Now, what did you intend to show by that sketch side view? A. What I remembered.

Q. Now, you say you pointed on the side view to blade A, sketch made on cross-exam. That is in your handwriting, is it?

A. That certainly is.

Q. And that black section of the side view, what is that intended to be? A. A lug.

Q. What do you mean by a lug?

A. Have you got a better name for a piece of steel welded on top?

Q. No; I am asking you what you mean by that.

A. A piece of steel.

Q. A piece of steel. All right. Now, what was the size or dimensions of that piece of steel?

A. I didn't measure it. It extended approximately a half inch out.

Q. Extended a half inch out? A. Yes.

Q. How long was it?

A. Those blades were probably about five-eighths of an [4006] inch wide and they were long enough

(Testimony of Clay Miller.)

to go at a 45-degree angle and completely cover the blade.

Q. And that was an idea that Mr. Hall had, did he tell you, for trying to make a centralizer rotate?

A. That is correct.

Q. And that is what you remember about this device that you saw at the Hall Machine Shop in Bakersfield, is that correct? A. Correct.

Q. Now, you are familiar with centralizers, are you not? A. Yes, sir.

Q. You say you made them? A. Yes, sir.

Q. I will place before you a centralizer and I will ask you if you recognize this device as a centralizer? A. I do.

Q. Are you familiar with that particular centralizer?

A. It is what I call a spiral centralizer.

Q. Do you know who makes the spiral centralizer?

A. The Weatherford Oil Tool Company.

Q. Do you recognize this as a Weatherford Oil Tool spiral centralizer?

A. I wouldn't recognize it as one built there. It could have been built by anyone. That particular one, I [4007] don't know.

Q. As far as you see, it is precisely the same as the one built by the Weatherford Oil Tool Company? A. That is right.

Q. Now, did this centralizer—and I am going to place this up here on the blotter—that you made a

(Testimony of Clay Miller.)

sketch of—look like this centralizer which I have placed before you?

A. No; the blades were straight.

Q. There was no— A. Spiral.

Q. —spiral to the blades?

A. That is right.

Q. Does it look like it in any other way?

A. Two collars top and bottom, and it has no lugs on it.

Q. And those lugs that you have drawn on this sketch, would you just state where they were on the blades of this centralizer, using this spiral centralizer to indicate it?

A. I will use my finger for the so-called lug (indicating). It was set on an angle like that.

Q. And you have placed your finger at about a 45-degree angle about the midpoint of the blades, and by "midpoint" I mean halfway between the two collars, is that correct?

A. That is correct. [4008]

Mr. L. E. Lyou: I will, for the purpose of illustrating the witness' testimony, offer in evidence the spiral centralizer as a defendants' exhibit next in order. Also I believe that since there has been considerable discussion of a spiral centralizer, perhaps it would be for the edification of the court and an exemplar of such centralizer which I think should be in the record.

The Court: Any objection?

Mr. Scofield: No objection. I should like to have counsel state whose centralizer it is.

(Testimony of Clay Miller.)

Mr. L. E. Lyon: It is the Weatherford Oil Tool centralizer purchased on the open market.

The Court: Very well. Is that agreed?

Mr. Scofield: Yes, sir.

The Court: Received in evidence as Defendants' Exhibit—

The Clerk: HQ. [4009]

* * *

Redirect Examination

By Mr. Scofield:

Q. Did you know Mr. Chris Nelson?

A. Yes, sir.

Q. In Bakersfield? A. Yes, sir. [4011]

Q. Did you ever discuss any of these devices with him? A. No, sir.

Q. To your knowledge, did he ever make any of these devices for Mr. Hall?

A. Not to my knowledge, no.

Q. When you saw the model in the Hall Machine Works did you see anything else there that Mr. Hall was working on besides this model?

A. No; the model was on the bench there, and there were parts laying around there which I didn't pay much attention to. [4012]

* * *

DEPOSITION OF ALFRED M. HOUGHTON
first having been duly sworn by the Notary Public,
was examined and testified as follows:

Direct Examination

By Mr. Scofield:

Q. Please state your name.

A. Alfred M. Houghton.

Q. Are you the same Alfred M. Houghton who gave a deposition in this case in January of this year? A. Yes—in 1950 it was.

Q. What was the date of that deposition, do you have it before you there?

A. January 9, 1950.

Q. Are you the patent attorney for Gulf Oil?

A. Yes; I am patent counsel for Gulf Oil Corporation.

Q. What do your duties include, Mr. Houghton, insofar as Gulf Oil is concerned?

A. I represent and advise Gulf in all matters having to do with patents, and also I advise them in connection with other matters, such as contracts and the like, acting as counsel for them in very many different matters.

Q. Do you handle any of the Gulf Oil Company's [4139-2] foreign patent applications?

A. I do.

Q. Do you handle all the foreign applications filed for Gulf Oil?

A. I supervise the filing of all of them.

Q. Do you counsel with the executives of Gulf Oil with regard to foreign patent matters?

(Deposition of Alfred M. Houghton.)

A. Yes; I discuss them with them.

Q. Where are the headquarters of the Gulf Oil Company?

A. It is a corporation of the Commonwealth of Pennsylvania, with its office in the Gulf Building, Pittsburgh, Pennsylvania, about Seventh Avenue and Grant Street.

Q. Does the Gulf Oil Company operate in Canada?

A. I do not think so, as Gulf Oil Corporation.

Q. Do you know under what company name they operate in the Dominion of Canada?

A. No; I am not sure of that. I know they have some subsidiaries, and I think those subsidiaries are corporations of the United States which, perhaps, are registered to do business in Canada.

Q. Do you know whether the Gulf has production in Canada? [4139-3]

A. Not to my own knowledge, but I have heard so.

Q. Do you know of a Mr. Bohart?

A. I know of Mr. Bohart, yes.

Q. Do you know where he is located?

A. My impression is that he is either in Tulsa, Oklahoma, or at Houston, Texas; I am not sure at this moment which. I have very little contact with him.

Q. To your knowledge, do you know whether or not he has anything to do with the Gulf Oil Canadian operations?

(Deposition of Alfred M. Houghton.)

A. I would gather, yes, from information which has come to me from time to time.

Q. I put before you, Mr. Houghton, a United States patent, No. 2374317, which is in evidence in this case as Plaintiff's Exhibit 38. You know of that patent, do you not? A. Yes.

Q. How long have you known of the patent?

A. For quite a long time, I imagine, shortly after its issuance.

Q. You have had occasion, then, to familiarize yourself with the disclosure of the patent?

A. Yes.

Q. Do you have any knowledge of a contract between the plaintiff, Jesse E. Hall, and Kenneth A. [4139-4] Wright, which involve that particular patent?

Mr. Lyon: That is objected to as calling for a legal conclusion of the witness.

The Witness: I know of a writing which purports to be a contract between those mentioned which, I think, does involve this patent.

Q. (By Mr. Seofield): Do you have a copy of that contract in your office? A. Yes.

Q. How long have you had that copy?

A. For quite a long while. I would have to look at my records to see when I first became possessed of a copy of it—first came into possession of a copy of it.

Q. Did you have the contract before you gave your deposition in January, 1950?

A. Oh, yes.

(Deposition of Alfred M. Houghton.)

Q. That particular contract is in evidence in this case as Plaintiff's Exhibit 34, and is dated September 15, 1944? A. Plaintiff's Exhibit what?

A. Thirty-four.

Q. How long after the date of the contract did you have knowledge of it, can you say? [4139-5]

A. What was the date?

Q. September 15, 1944.

Mr. Lyon: I do not believe that this witness is qualified to answer as to what instruments are or are not in evidence in this case, and if this is an attempt to get this witness to affirm what is or is not in evidence, I think it is entirely improper.

Mr. Scofield: Well, there is no such attempt, of course. The question does not so indicate.

The Witness: Around about April of 1947, in connection with an investigation I was making of patent rights of Kenneth A. Wright or the B & W Company, I had an assignment search made in the United States Patent Office, and there was located this contract which was there recorded, and I sent a stenographer over to the United States Patent Office and made a copy in order that I may have it in event that I should have to consider it in connection with the investigation.

Q. (By Mr. Scofield): Did you also at that time have a copy of the Wright patent, 2374317, which you have before you?

A. I think so, yes. That was one of the patents I was investigating.

Q. I put before you a Canadian patent, No.

(Deposition of Alfred M. Houghton.)

way as the patent marked for identification Exhibit Q2. It was published in the Canadian Gazette as a reissue, and we ordered copies and studied it.

Q. Did you make any investigation of this Wright reissue patent after it came to your attention?

A. Yes. In the normal course of work, being interested in this situation, we compared it with the Canadian patent 463822 to determine the difference in the claims over that patent. [4139-9]

* * *

Q. I shall try to fulfill your expectations.

On the receipt of this letter from Mr. Wright, what did you do next? Did you make further investigation of this reissue patent?

A. I do not think so; I had already considered the patent. I note that in my receipt date stamp, which is April 9, 1951, on this letter, there is in the space "Refd to," there is a notation "JHL," so that it was referred to Mr. James H. Littlehales, for whom these initials stand, for his consideration. The claims being the same as those I had [4139-14] already considered, I do not think we did anything further about it. [4139-15]

* * *

Q. Did you see anybody from the firm of Lyon and Lyon during June, 1951?

A. I think so. I am not sure; I will have to check up on that.

Q. Do you have a record of that there?

(Deposition of Alfred M. Houghton.)

A. On June 19, I had a letter from Lyon and Lyon, [4139-27] stating:

"When I was last in Washington I stated that I would advise you with respect to the Hall vs. Wright case set for today, June 19. The case was called today by the Court."

I do not know what else this has to do with him—oh, yes. He says:

"I enclose a decision of the Commissioner of Patents in the Hall vs. Wright interference directing the primary examiner to finally reject the pending Hall application, Serial No. 55619, thereby concluding that no patent should be granted to Hall upon his application."

Q. Is that a letter from Mr. Leonard Lyon to you?

Mr. Lyon: No; it is a letter from Mr. Lewis Lyon.

The Witness: No; it is not.

Q. (By Mr. Scofield): That is a letter from Mr. Lewis Lyon to you, Mr. Houghton?

A. Yes.

Q. Now, had you seen Mr. Lewis Lyon or Mr. Leonard Lyon during the month of June, [4139-28] 1951?

* * *

Q. What was the other matter that was under consideration, Mr. Houghton?

A. It was a matter between Mr. Lyon and myself, as to offering when he sold us scratchers, if we purchased them, to let the purchase price in-

(Deposition of Alfred M. Houghton.)

clude a royalty, which would give us a license immunity under all patents which might cover the use of it.

Mr. Scofield: I think the letter is pertinent, and I should like to have it marked, if you will, please. That is Exhibit 83.

The Witness: I objected to the procedure because there might be an implied admission of validity of the patent that we might take a royalty under. I later secured from Mr. Lyon a statement that that would not be so, and he would not hold us to that, and I think I approved the [4139-42] purchase of the scratchers under those conditions. It was all an entirely different matter from any Canadian patents or anything of that [4139-43] sort.

* * *

Q. Was the Venezuelan litigation discussed at all in this conference had in Pittsburgh on August 20, 1951?

A. No; only in a most general way in the sense that the parties were litigating in the United States, and we thought there was some litigation going on in Canada. I think you had advised me that you were going to file some petition, or had filed some petition, to cancel the Canadian Wright patent, and in a general way [4139-44] it was merely said that was the trouble here; all this litigation between the parties, the controversy, is of their own making, and that we cannot keep on being involved in this all the time, so let us make some decision as to

(Deposition of Alfred M. Houghton.)

what we should do, and it was decided that since Gulf always respected the patents of others, that having been our policy for years, we would take this situation as it existed from the patent standpoint, and since Wright had a patent in Canada covering the operations we would conduct until we had reason to know that that patent did not cover those operations or was invalid, we would respect it; and therefore we thought we should advise what we called the field to buy only B & W scratchers in Canada, and thus respect that patent, until conditions changed or we wished to advise otherwise.

As regards the United States, we decided there was a controversy going on. The parties seemed to think that I, as patent counsel, should interpret the old contract between Wright and Hall, make a decision as to what will ultimately happen in this litigation; and I have taken the stand constantly that since there is this litigation the court should decide such matters, and the very fact that there is a litigation shows that there is doubt, at least as to the patent situation [4139-45] in the United States. [4139-46]

* * *

Q. Was there ever any discussion of any kind had at any time between you or Mr. Littlehales, Mr. Wright, Kenneth A. Wright, or myself, or any other representative of Lyon & Lyon with respect to the Canadian reissue patent No. 463822?

Mr. Scofield: That is the parent.

Mr. Lyon: That is the reissue.

(Deposition of Alfred M. Houghton.)

Mr. Scofield: That is the parent.

Q. (By Mr. Lyon): No; change that number to 472221.

A. I don't recall now. If you know of it and could refresh my recollection I would be very pleased.

Q. Is it not a fact—

Mr. Scofield: Let him finish the [4139-82] answer.

The Witness: I don't think there was any detailed discussion of the reissue patent between us; I don't recall it.

Q. (By Mr. Lyon): Is it not a fact, Mr. Houghton, that on July 23, 1951, at the time that Mr. Wright and I were in your office, that a conversation took place substantially as follows, where you asked me, "How did you obtain so much better claims in Canada than you did in the United States," and that I replied, "We had nothing to do with obtaining the claims in the United States and were not bound to repeat the same mistakes that were made here in Canada"?

A. I remember something about that, Mr. Lyon, but as to the date of that talk, I don't know; I do remember that—

Q. Do you remember any other discussion had with respect to the Canadian patent, the Canadian reissue patent, with myself or Mr. Wright or anything else that was said?

Mr. Scofield: Of course, I object to counsel's statement as to what occurred as merely being self-

(Deposition of Alfred M. Houghton.) glorification, as to the results in Canada, but otherwise I will let it go without too much comment.

The Witness: Mr. Lyon, I don't recall those matters in detail.

Q. (By Mr. Lyon): Well, you do not recall——

A. I can refresh my recollection sometimes by little [4139-83] things that are said, little suggestions, but I am sure if it had been any definite statements that I thought were germane to this involved situation I would have made a memorandum of it at the time, and I don't have any such memorandum of that kind of the talk.

Q. Well, you remember no other conversation?

A. I don't remember it; no, sir; I am sorry. If there was one, I don't remember it.

Q. All right. I do not know of any other.

A. Well, I am glad to be affirmed by such able counsel. [4139-84]

* * *

Q. On July 23rd you also informed me, after I had assured you that the Gulf Company's purchasing of B & W scratchers on the invoice in question would not be construed as an admission by you or the Gulf Company of the validity of the Wright patents, that you would accept that method of invoicing?

A. I hardly ever make that kind of a definite statement until I have had a chance to consider it. I think probably what I said was that I would be inclined to advise that it be accepted. [4139-85]

* * *

(Deposition of Alfred M. Houghton.)

Q. Mr. Houghton, you have requested of me from time to time, and also of Mr. Wright and Mr. Coy of our office, that we at all times keep you fully advised as to anything that might occur in this, we will call it, scratcher situation which might be of interest to you, have you not?

A. In the early stages I think that was the understanding. [4139-86] Whether or not I requested it definitely, and I did the same thing with Mr. Scofield—but lately I have told both of you or one of you that I don't request that information any more.

Q. You do not want any more information?

A. I do want it, but I don't request it. If you gentlemen wish to send it to me of your own accord, I will appreciate it, but I don't request it because I don't want any inference to be drawn here that I am taking sides in this [4139-87] controversy.

* * *

The Court: What does the plaintiff claim is the closest prior to this claimed invention of Wright?

Mr. Scofield: The method or the apparatus, your Honor?

The Court: Both, or each.

Mr. Scofield: It is according to what method you are referring to. If it is the method that they have represented to the trade that the patent covers—

The Court: I am referring to the method described in the patent.

Mr. Scofield: As far as the method described in

the [4158] patent is concerned, your Honor, I do not believe there is any very good art.

The Court: How about the device?

Mr. Scofield: The device, your Honor, I think is pretty well anticipated by the Shaw patent in connection with the patent to Black and [4159] Stroebel.

* * *

The Court: You claim that the Black and Stroebel—first the Shaw patent and then the Black and Stroebel patent, is that correct?

Mr. Scofield: Yes. [4160]

* * *

Mr. L. E. Lyon: My motion is under Rule 13(e) and 13(d), and it is a motion to file a supplemental counterclaim for declaratory judgment growing out of the fact that there has issued on Exhibit 69 here in evidence, the patent to Jesse E. Hall on March 9, 1954, which is United States [4165] Letters Patent No. 2,671,515, which is germane to these issues and, in fact, is one of the matters within this issue, and is a matter growing out of the same transactions, in fact, in my opinion it would be a compulsory counterclaim had the matter been matured at the time of the filing of the pleadings in this matter, and certainly all of the evidence with respect to that patent, a great deal of that evidence is already in evidence here, and the three claims which the patent issued have already been testified to on the stand by Mr. Doble and a comparison made of those claims with the prior art.

It is my request that the supplemental pleading

be filed as soon as I can prepare it. It will be prepared today, if possible. I learned of the issue of this patent at 9:30 this morning.

And if there is any answer required or permitted under Rule 13(d), I would request that this matter proceed to immediate trial, if any further trial is required, either tomorrow or at the court's first opportunity which, if not during this week, might be during the first or second week of April. [4166]

Mr. Scofield: Of course, your Honor, we know of the issuance of the Hall patent, and this Hall patent, as you probably know, was issued on the three claims that were allowed, the 23, 24 and 31, which were mentioned yesterday in my argument; that is, these claims were in the Exhibit 69 application which is the 55,619.

We have chosen to prosecute this particular patent in another jurisdiction not because we would not like to try it here but because it is more convenient for us to try it elsewhere.

Mr. L. E. Lyon: That is just, your Honor, what I object to, a multiplicity of suits to determine a matter which can be equally determined in this court, with the evidence mostly before this court at the present time; and also the fact that there will be undue publicity given to this matter which is already before the court at the present time.

The Court: If we include this one, is there any chance of ever getting a decision in this case, or will some other hydra-headed issue be raised?

Mr. L. E. Lyon: There is no other issue that I know of this character that could arise.

Mr. Scofield: We have already chosen our jurisdiction, your Honor, and the suit has been filed.

The Court: Where is the suit? [4167]

Mr. Scofield: It is pending in the State of Kansas against J. L. Robinson. It was filed yesterday or Monday.

Mr. L. E. Lyon: You see, your Honor, that is filed against a customer or distributor rather than being filed direct. And we would also ask this court, under the authority of a similar proposition, that the trial of that case be enjoined pending the outcome of this case where the same issues are now before the court.

The Court: Your motion is to file a supplemental complaint, a supplemental counterclaim?

Mr. L. E. Lyon: Yes, your Honor, for declaratory judgment with respect to this patent.

The Court: A supplemental answer setting forth a counterclaim for declaratory judgment declaring what?

Mr. L. E. Lyon: With respect to this patent, to have the patent declared invalid and not infringed.

Mr. Scofield: Those issues, of course, your Honor, are not before this court.

Mr. L. E. Lyon: The issue of these claims is certainly before this court and they have been testified to extensively; in fact, you argued them yesterday yourself.

Mr. Scofield: No, I did not. I did not argue them yesterday.

Mr. L. E. Lyon: Further, there has been notice

given to the trade that our customers will be sued under this [4168] patent as soon as it issues.

The Court: I do not suppose there is any question that there is a controversy between you as to the validity of those claims, is there?

Mr. Scofield: I think that is true.

The Court: Is there any question about it?

Mr. Scofield: No question about that.

The Court: I will permit the counterclaim to be filed.

You gentlemen brought all of this here. You were welcome to take it anywhere else. You brought it all here, and I am going to button it up and decide it as soon as it is possible to do it.

Mr. L. E. Lyon: Thank you, sir.

The Court: You may file a counterclaim.

Mr. L. E. Lyon: I would ask the court to set this additional matter, if any further evidence is required, for the first week in April.

The Court: Will there be any further evidence?

Mr. Scofield: What is the effect, your Honor, of the suit that is already filed in Kansas?

The Court: It is still pending. It is not between these parties.

Mr. Scofield: These parties will intervene; there is no question about that.

The Court: They are not named. [4169]

Mr. Scofield: No. J. L. Robinson is named.

The Court: It is a suit against someone else.

Mr. L. E. Lyon: In this case—well, I will present the motion later when I learn what the case is. If there is any publicity given to it, I will consider

it a violation of the injunction of this court, matters arising out of this controversy, being a distributor, which injunction now stands.

The Court: I would not wish this controversy off on the District Court of the District of Kansas at this stage. In 1947, yes, or '8.

Mr. L. E. Lyon: Any place else.

Your Honor, what will your Honor's ruling be with respect to the presentation of additional evidence?

The Court: Is there any more evidence to be presented?

Mr. L. E. Lyon: We will present evidence probably in the way of a distinction between the claims, with certain correspondence or certain presentations with respect to the claims and allegations concerning their limitations. That will be very short. It could be taken care of in an hour.

The Court: What kind of evidence? Do you mean an expert?

Mr. L. E. Lyon: Yes, your Honor.

The Court: Isn't that just a matter of argument?

Mr. L. E. Lyon: It may be just a matter of argument. [4170] I don't know whether the plaintiff would desire to offer any evidence or not.

Mr. Scofield: That I will have to give some consideration to, your Honor.

Mr. L. E. Lyon: The question of filing a response to such supplemental proceeding is governed by Rule 15(d), and also the question of the presentation of further evidence; and that is why I was

asking your Honor at this time to determine those matters.

Mr. Scofield: Well, your Honor, I can't take this up in April. It will have to be delayed until after April.

Mr. L. E. Lyon: Take it up this week.

The Court: I cannot envision any additional evidence that would be offered by either side.

Mr. L. E. Lyon: Well, I can't, either.

The Court: I cannot think of any. If you gentlemen have that much ingenuity, you may think of another witness to call upon the subject.

Mr. L. E. Lyon: I have no other evidence, other than that which I have indicated and which is as your Honor has indicated, probably better a matter of argument, that I would offer on the matter.

As far as the plaintiff is concerned, of course, I can't tell what their ideas are.

The Court: When will you have your supplement? [4171]

Mr. L. E. Lyon: I will go back to the office and dictate it right now if this matter is adjourned for that purpose, or I can proceed and dictate it this evening.

It might be better, before this matter is concluded, to have the entire pleadings settled and the argument, before any further argument, so that the matter of any additional evidence can be determined and the matter concluded in one orderly fashion if possible.

I was suggesting the first two weeks in April, your Honor, because I have a case in San Francisco

starting the 19th and I have a very bad confusion in that week already. I am also required to be in the Supreme Court in Mexico on the 19th of April. I don't know how I am going to get to both places now.

The Court: Mr. Scofield says that he cannot take it up next April. Let us submit it now, gentlemen. We will hold a session tonight, if necessary; take a recess now.

Can you settle these pleadings by 2:00 o'clock this afternoon?

Mr. L. E. Lyon: I think I can, your Honor.

The Court: Can you serve Mr. Scofield by 12:00 o'clock?

Mr. L. E. Lyon: I can serve Mr. Scofield by 12:00 o'clock.

The Court: You could have an answer by 2:00 o'clock, couldn't you, Mr. Scofield? [4172]

Mr. Scofield: I don't know what it will be, your Honor.

The Court: Let us make an effort, gentlemen. This litigation is going to join the Jarndyce case if we do not.

Mr. Scofield: Your Honor, I would think it would be more orderly here to have us complete this argument on the issues we have now before us, and then let him prepare his pleading and let the answer come along and immediately proceed to the matter. That is, to interrupt this now, it seems to me, is—

The Court: Any issues as to those claims are here now.

Mr. Scofield: No; it is a separate proceeding.

Mr. L. E. Lyon: No; it is not.

Mr. Scofield: It is a separate patent. It is a separate—

The Court: The application has been here litigated, in effect.

Mr. L. E. Lyon: That is right.

The Court: The only difference is that now it is in the form of Letters Patent.

Mr. Scofield: This case, your Honor, has been whittled down—

The Court: There is no difference in substance.

Mr. Scofield: —has been whittled down to the unfair competition that we are charging against them and that they are charging against us, and infringement of the Wright [4173] patent, up to now.

The Court: I want to adjudicate the Hall patents, too. I have heard enough about them. And I am not going to wish it off on any other judge if I can help it.

I will expect you to be at issue at 2:00 o'clock, gentlemen, if it is humanly possible for you to do so. You can do it soon, Mr. Scofield? [4174]

* * *

Mr. L. E. Lyon: At this time I will file with the clerk the supplemental answer and counterclaim which have been prepared and served as directed this morning, and ask that the same be filed.

The Court: Any objection to the form of it, Mr. Scofield?

Mr. Scofield: No objection, your Honor.

We have prepared a reply and it is now being typed and will be over just as soon as it is finished.

In that regard, however, I notice that they have in their counterclaim for declaratory judgment of the Hall patent, that they deny infringement. Now it seems to me that we had better have here an understanding as to that matter because otherwise we will have to file a positive pleading, that is, an amended complaint of our own, an amendment to our second amended complaint.

The Court: Well, you are alleging in your answer that they are infringing, I take it?

Mr. Scofield: No, we are just denying, that is, we are denying the allegations and we would have no positive pleading, but we will want a positive pleading unless they will stipulate to that effect. And we want also a stipulation, [4175] certainly, that if the patent to Hall is adjudicated valid and infringed that your judgment will be enforceable without a separate pleading.

Mr. L. E. Lyon: We certainly are making no stipulations. We set forth the fact that there is no infringement on very good ground of the three claims of that patent with the interpretation of the claims that have been set forth by Mr. Scofield.

The Court: Apparently the supplemental answer and counterclaim just filed alleges that the defendants have not infringed said letters patent or any claim thereof.

Mr. Scofield: That is right.

The Court: I take it that that refers to the Hall letters patent No. 2,671,515 issued March 9, 1954.

Mr. Scofield: That is correct.

Mr. L. E. Lyon: That is correct.

The Court: Do you deny that?

Mr. Scofield: Certainly. And we are going to file with your permission a pleading to the effect that they do infringe.

The Court: Why would you need to do that? I do not quite follow that. The prayer seeks a judgment, a declaratory judgment that the defendants have not infringed any of the patent or any claim thereof.

Mr. Scofield: But we have no assurance, your Honor, [4176] that they might not dismiss this as they had dismissed some of these pleadings in the past. Then here we are without a positive pleading in this case as to infringement of the Hall patent and it won't be disposed of in this case.

You have indicated that you are anxious here to have this Hall patent adjudicated. I am anxious, too, and I am desirous of having the whole thing disposed of here, but I don't want any delay occasioned by some quirk or technicality on pleadings.

The Court: You wish to file a supplemental complaint?

Mr. Scofield: I would like to file an amendment.

The Court: Charging infringement?

Mr. Scofield: Yes, sir.

The Court: An amended and supplemental complaint charging infringement?

Mr. Scofield: That is right.

The Court: It will be only supplemental.

Mr. Scofield: That is all, just supplemental or an amended complaint to our second amended complaint.

The Court: Any objection?

Mr. L. E. Lyon: No objection, your Honor, if it may be deemed that this is an answer to that. I don't see any reason for stringing out this pleading.

The Court: Would it be stipulated that the supplemental answer and counterclaim just filed is an answer to your proposed [4177] supplemental complaint charging infringement of this new patent?

Mr. Scofield: That I hope will be stipulated to.

The Court: In other words, that would, I take it, be normally the course of events?

Mr. Scofield: That is right.

The Court: That is, that the plaintiff Hall would charge infringement of this new patent?

Mr. Scofield: That is correct.

The Court: And the defendant might file his answer denying it and counterclaim it?

Mr. Scofield: That is right, or he can stipulate that this will be an answer if he chooses, and that stipulation I would accept.

The Court: Very well. Can you serve and file by tomorrow morning a supplemental complaint charging infringement by the defendants of this new patent, and then it is stipulated, I understand, that the supplemental answer and counterclaim this day filed may stand as the answer to that supplemental complaint charging infringement.

Mr. Scofield: That, your Honor, is being prepared at the present time, that complaint.

Mr. L. E. Lyon: So stipulated, unless there is something alleged in that complaint that we do not foresee at the present time. [4178]

The Court: Yes. It is only permissive that you may permit this answer to stand.

Mr. L. E. Lyon: Yes.

The Court: Very well, gentlemen. I appreciate the difficulty anticipating all of these things on such short notice.

Mr. L. E. Lyon: At this time I would like to be notified as to any other suit that has been filed pursuant to the order of this court that the court was to be kept advised of all litigation pending between the parties and which order was not followed in the filing of this new action, and I understand it was filed in Kansas, and I would like to be notified as to any other suit that has been filed.

The Court: Did you have anything to do with the filing of this Kansas suit?

Mr. Scofield: Yes, sir.

The Court: Are you familiar with the rules of this court that requires attorneys in every case to keep the court advised of any litigation pending in any other court?

Mr. Scofield: Yes, sir. I intended to.

The Court: When was the action filed?

Mr. Scofield: Monday. I just got the word this morning but it has not been served as yet.

Mr. L. E. Lyon: Your Honor, I would also like to have this court to enjoin the prosecution of these

plaintiffs from prosecuting that action pending the outcome of this action, [4179] as it involves the same issues and all of the issues are before this court and it makes for needless multiplication of expense. The only reason for filing it was to prolong this litigation. It could have been brought in here in the same way that I brought it in this morning when I learned of it, but they didn't desire to do that.

Mr. Scofield: That wasn't the purpose.

The Court: Do not prolong this litigation. I suggest that since you are a party to that action——

Mr. L. E. Lyon: We are not a party to that action. They sued one of our customers and not B & W. I have been in touch with the clerk in Kansas City.

The Court: That is correct. I am sorry. I was in error in making that statement.

Has there been service? [4180]

Mr. L. E. Lyon: There has been no service, according to the clerk in Kansas City, and I called this noon. There has been no service made. There has been a direction that service be made, however, and the complaint and summons for service has been sent to Topeka, Kansas, according to the clerk, for service, the defendant in the case residing in Big Bend.

Mr. Scofield: Great Bend.

Mr. L. E. Lyon: Great Bend, Kansas.

Mr. Scofield: The reason, your Honor, that you had not been notified, I was awaiting the news that it was served. It has not been served as yet.

Mr. L. E. Lyon: I don't know any reason for waiting for the news it was served.

Mr. Scofield: I didn't know whether we could get the service.

Mr. R. F. Lyon: You did not get an answer to the question whether there were more suits?

Mr. Scofield: There have been no more suits.

The Court: Of course, the spirit of that rule would require that you ask permission of this court. That is one of the difficulties in this case throughout—a controversy submitted to this court and then in turn submitted to a number of other courts, or branches of the controversy.

Mr. Scofield: I did not understand the rule, your [4181] Honor—I may be wrong—I did not understand the rule to be that we had to get permission of the court; that is, this is an entirely different issue there in Kansas. This is on another patent.

The Court: I understand. That is one of the vices with a great deal of this type of litigation, that it engages the attention of too many courts, in my view. It is enough to engage the attention of one court in connection with the matter. There may be other causes of action. You may have a thousand causes of action that you could bring, but this court of equity does not have to listen to you if you are going to go around over the country engaging the attention of other courts.

Mr. Scofield: We were very anxious to expedite it, and what Mr. Lyon says here is entirely in error as to our purpose for filing the Kansas suit.

Our purpose for filing the Kansas suit was to expedite it and not delay. That is what we wanted to do, is to have our patent adjudicated, and adjudicated as soon as possible. And as soon as your Honor indicated that you would take it into this case and would do so immediately, why, I was certainly very glad to have you join it here.

The Court: Is there any occasion for this court to enjoin the further prosecution of that action?

Mr. Scofield: I do not see any reason [4182] for it.

The Court: Or will you withhold any further prosecution?

Mr. Scofield: I won't prosecute that case if you go ahead here immediately and adjudicate it here.

The Court: We are moving as rapidly as we can.

Mr. Scofield: That is what I say, I will not prosecute it there.

There is one other thing, your Honor——

Mr. L. E. Lyon: Are you going to withhold service, or are we going to have to go in front of that court and make a motion?

Mr. Scofield: I think the service ought to be made. I don't see any reason why——

The Court: Then that starts the machinery going and causes the defendants to assert a defense.

Mr. Scofield: I don't see any reason for it not being asserted there; that is, we will withhold prosecution in that case.

The Court: You will have to employ a lawyer, I suppose, Mr. Lyon?

Mr. L. E. Lyon: Certainly, that is what I am telling you.

Mr. Scofield: I don't think that is an imposition. What we have been doing in this case, your Honor, we have been subjected to much worse things than that, so far as these defendants are [4183] concerned.

Mr. L. E. Lyon: I don't know what it is.

Mr. Scofield: There is one other matter.

The Court: Perhaps I had better issue an injunction if we cannot do it any other way.

Mr. Scofield: I would like to know, your Honor, if we are going to dispose of this matter at the present time; that is, there will be no delay in the adjudication of this patent?

The Court: It may take me six months to decide it. I won't promise you——

Mr. Scofield: No; I did not mean that. I mean the actual trial of the action on the patent.

The Court: I don't know why there would be any delay. Is there any evidence to be offered except the Letters themselves?

Mr. Scofield: Well, there is this question of infringement.

The Court: Can't you gentlemen stipulate as to what devices are being sold?

Mr. L. E. Lyon: The devices that are being sold are before the court at the present time, your Honor, as physical exhibits, all of them.

The Court: Do you have a copy of the Letters?

Mr. Scofield: A copy of the Letters Patent, you mean?

The Court: Yes. [4184]

Mr. Scofield: Yes, sir.

The Court: Do you wish to offer them in evidence?

Will it be stipulated what devices are being sold now by the defendants which are alleged to be infringed?

Is there any further evidence to be offered?

Mr. Scofield: Will you need any more evidence with respect to this matter of infringement? Do you want us to apply these claims to this as Mr. Doble did the claims of the Wright patents to our structure?

The Court: It is a matter of argument, I take it. You may proceed as you like. If you put an expert on the stand, I would just treat him as speaking as a lawyer.

Mr. Scofield: Well, if you will permit me to make the argument in applying the claims to the structure, I will dispense with that evidence. But in view of the fact, your Honor, that they have denied infringement here, I must certainly make that proof that they do infringe. And if you will permit me to argue it and show you the structure and apply the claims to the structure, why, that will be sufficient.

The Court: What devices that are in evidence here, or what devices that the defendant is selling, are alleged to infringe the new Hall patent?

Mr. Scofield: The Multiflex and the Nu-Coil.

The Court: What exhibits? [4185]

Mr. L. E. Lyon: Your Honor, I am engaged at the present time in getting out the exhibits which are exemplars of what we are manufacturing and selling at the present time, so I can make a statement in that regard to the court.

The Court: I anticipated you were. I merely asked Mr. Scofield what the plaintiff contended.

Mr. Scofield: I am looking up the numbers of the exhibits, your Honor.

Mr. L. E. Lyon: Here they are, your Honor, the exhibits of structures which defendant is manufacturing and selling at the present time—

Mr. Scofield: 57 and 72, I believe.

Mr. L. E. Lyon: —are Exhibits 104, the wall cleaning guide—

Mr. Scofield: No, we do not contend that infringes.

Mr. L. E. Lyon: —Exhibit 72, the Nu-Coil scratcher, and Exhibit 57, which is the Multiflex scratcher. Now, those we are willing to stipulate are the structures which we are manufacturing, selling, and offering for sale at the present time.

The Court: Throughout the United States and in foreign countries?

Mr. L. E. Lyon: Throughout the United States and countries foreign to the United States.

The Court: Very well. Do you so [4186] stipulate? •

Mr. Scofield: Yes, sir.

The Court: Do you wish to offer a copy of the Hall Letters Patent in evidence?

Mr. Scofield: Yes, sir, if I have it.

The Court: No. 2,671,515, issued March 9, 1954.
Do you have a copy?

Mr. Scofield: Yes, sir. I will offer a copy of the Hall Patent 2,671,515 as Plaintiff's Exhibit 286.

The Clerk: 286.

Mr. L. E. Lyon: Have you a copy of that that I might have?

Mr. Scofield: I will get you a photostat. I have two of them. I will give you a photostat of this one.

The Court: Is it stipulated that the document now offered is genuine and in all respects what it purports to be?

Mr. L. E. Lyon: Stipulated it is a true copy of the patent granted by the United States, by the Commissioner of Patents on March 9, 1954. As far as stipulating that it is genuine, I do not question the matter that it is a copy. However, the word "genuine" I shy away from.

The Court: It might import validity, might it?

Mr. L. E. Lyon: That is right.

The Court: Very well. I did not use it in that sense.

Mr. Scofield: I believe you are willing to stipulate [4187] you saw a copy of the patent.

Mr. L. E. Lyon: You furnished a copy.

The Court: Very well, it is received in evidence as plaintiff's exhibit next in order, Mr. Clerk.

The Clerk: 286, your Honor.

The Court: 286.

(The document referred to, marked Plaintiff's Exhibit No. 286, was received in evidence.)

The Court: Plaintiff makes the contention that Exhibit 57, the Multiflex scratcher, and Exhibit 72, the Nu-Coil scratcher, now in evidence, infringe the new patent, Exhibit 286.

Mr. L. E. Lyon: All the claims of it?

Mr. Scofield: That is correct.

The Court: All three claims of it?

Mr. Scofield: Yes, sir.

The Court: And the defendant, of course, denies it.

Mr. L. E. Lyon: That is correct.

The Court: Now, is there any further evidence to be offered either on that controversy as alleged in the counterclaim or the claim for infringement alleged in the supplemental complaint to be filed?

Mr. Scofield: As far as the plaintiff is concerned there is no more. [4188]

* * *

Mr. L. E. Lyon: So that there may be no misunderstanding and no ambiguity in this matter, paragraph numbered 4 of the supplemental answer and counterclaim filed this day, March 17, 1954, I wish to make it known that the "and others" referred to in paragraph 4(e) refers—and I shouldn't have put in "and others"—but it refers to the Union Oil Company and to Thomas Kelly and Sons.

And if that may be understood, I make that statement to avoid any ambiguity.

The Court: That is paragraph 4?

Mr. L. E. Lyon: (e), on page 4, where it says "and others."

Mr. Scofield: That is (e) under (f), Mr. Lyon.

Mr. L. E. Lyon: It is on page 4. It is (e) under (f).

The Court: It is "e" in parentheses under small "f" in parentheses.

Mr. Scofield: Yes, your Honor.

Mr. L. E. Lyon: It says "and others" on page 4. That refers to the Union Oil Company, Rosecrans operations, Wells 38 and 39, and the other Union Oil Company uses of the wall cleaning guide, as well as the Thomas Kelly & Sons operations on December 31, 1939.

Mr. Scofield: There are a couple of questions, Mr. Lyon, that I would like to ask you. You have got, I believe, "Nevada" spelled wrong on page 2, line 7, at the end. [4190] Is that meant to be "Nevada"?

Mr. L. E. Lyon: What line?

Mr. Scofield: Line 7 of page 2.

Mr. L. E. Lyon: Yes. My secretary got her letters mixed.

The Court: Do you intend to seek a declaratory judgment that the defendants have not infringed the patent?

Mr. L. E. Lyon: Yes, your Honor, both that the patent is invalid and not infringed depending on the alleged interpretation of the claims that Mr. Scofield may argue for.

The Court: The non-infringement is not one of the controversies?

Mr. L. E. Lyon: I will tell you what that is if

I may have a copy of the letters patent and the claims.

And that comes from the use in the claims, which has already been held immaterial and of no moment—I mean by the Patent Office—because it has no operative reason, and that is, the claims say, referring to Exhibit 286, the sixth column and the seventh column. For example Claim 1—

Mr. Scofield: Page what?

Mr. L. E. Lyon: Column six. These new patents are not numbered by pages but by columns. It is column six. It defines the point of projection as at the point of the periphery in each of the claims. In Claim 1 the wording is: "having sidewise direction with respect to the radius of the support [4191] drawn to said projection point of the particular whisker," that being the words used in that claim.

In Claim 2 I believe the same import is found, although I have not even read a copy of this patent until it was just handed to me so that—yes. In Claim 2, in lines 55, 56 and 57 of column 6 of Exhibit 286 the same statement is set forth.

In Claim 3 the statement is set forth in column 7, lines 4 and 5, where it says: "and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius drawn to said projection point," and tying it down to the projection being at the point of the periphery.

That is the point of controversy if any with respect to the matter of infringement.

The Court: Do you have any extra copies of this patent?

Mr. Scofield: No, but I will have it photostated, your Honor.

Mr. L. E. Lyon: I have telephoned today to Washington to send some more out. I expect that they will be here in the morning.

Mr. Scofield: There is one other thing I would like to ask about paragraph 3 of the supplemental answer and counterclaim that has just been filed. That is, I notice that both plaintiff and defendant are singular as used in that paragraph. [4192]

Mr. L. E. Lyon: Which paragraph?

Mr. Scofield: Paragraph 3.

Mr. L. E. Lyon: Well, in that respect, as far as the evidence before this court is concerned, I believe there is one defendant but there are plural plaintiffs. B and W, although this is entitled Kenneth A. Wright, et al., there is no evidence that has been presented to this court of any personal liability of Mr. Wright and it is my intention to move to dismiss as far as Mr. Wright is concerned.

As far as Jesse E. Hall, Sr., is concerned, he is the patent owner and there are a multiple plaintiffs in this action and it should be "plaintiffs" and "defendant."

Mr. Scofield: No, there is no controversy, your Honor, between any of these defendants here.

Mr. L. E. Lyon: That is a matter of answer.

Mr. Scofield: With respect to the Hall patent and if you are going to make it singular as to B and W then I only want it against Mr. Hall. That

is there is no controversy here between any of these companies with respect to this patent.

Mr. L. E. Lyon: All of these companies are shown by the pleadings as asserting to be operating under a license from Mr. Hall and they are still in there for the same reason that caused the adjournment of this action in 1952, to bring all parties which had any claim before the court. [4193]

Mr. Scofield: There is no controversy, however, with reference to this patent, your Honor, and it is solely between the plaintiffs here, that is, the plaintiff Hall and the defendants Wright and B and W.

The Court: Are the other plaintiffs licensed under this patent?

Mr. Scofield: No, sir, they are not licensed under the patent.

Mr. L. E. Lyon: The agreements are before the court.

Mr. Scofield: They are before the court but there is no license under this patent as yet.

Mr. L. E. Lyon: They are licensed under the applications and any patent that may be granted. The agreements have been before the court.

Mr. Scofield: Look them over.

Mr. L. E. Lyon: Any rights that the plaintiff Hall might acquire—all right. Let's look them over. What are the exhibits?

The Court: As far as the allegations are concerned, of course the supplemental answer and counterclaim is filed by defendants B and W, Inc., and Kenneth A. Wright.

Mr. L. E. Lyon: Et al.

The Court: No, I am referring to the introductory clause, "Comes now defendants B and W and Kenneth A. Wright."

Mr. L. E. Lyon: That is because Mr. Wright is named as [4194] a party in the action at the present time. However, Mr. Wright should probably be deleted from that. He is only as a party to the litigation already joined in this supplemental answer.

Mr. Scofield: Your Honor, here on page 4 they are attorneys for both of them.

Mr. L. E. Lyon: Of course we are attorneys for both of them. I don't deny that.

Mr. Scofield: And they both have signed these pleadings by their attorney.

The Court: But the question is here, there is nothing to prevent the corporation B and W, Inc., from filing a supplemental answer and counterclaim and stating a controversy exists between it.

Mr. Scofield: I think there does.

The Court: And someone else? I suppose there is probably no justiciable controversy between Kenneth A. Wright, an individual, unless he is engaged in the business, is there? Is there any claim that this B and W is the alter ego of Kenneth A. Wright?

Mr. Scofield: No, but Kenneth A. Wright throughout this proceeding, your Honor, has been the one that was contending that there was this controversy. It was in the Patent Office that he contended that there was a controversy as to the validity of this patent. [4195]

The Court: Did he appear personally or as an officer of the corporation?

Mr. Scofield: No, he appeared there in the Patent Office as the inventor, as the patentee, and he was contending that this patent was fraudulently issued.

The Court: Does the record show whether or not he has any further interest in the patent or the invention?

Mr. L. E. Lyon: No, it is entirely assigned to B and W.

Mr. Scofield: I don't think that that quite is the problem we have here.

The Court: We are not interested in adjudicating a dispute between some bystanders who just happen to have an academic interest in this matter.

Mr. Scofield: That is right.

The Court: We are interested in adjudicating a justiciable controversy between parties who are entitled to have a financial interest in it.

Mr. Scofield: And, your Honor, the paragraph reads that a controversy exists between the plaintiff and the defendant with respect to the validity and the scope of the claims.

Now Wright himself is contesting the validity of this patent and did in the Patent Office?

The Court: Personally?

Mr. Scofield: Yes.

The Court: Or as an officer of the [4196] corporation?

Mr. Scofield: No, personally.

The Court: He appeared in the patent proceedings in person?

Mr. Scofield: Yes, sir. He appeared because he was the sole person that appeared, for instance in these interference proceedings, and when they set up these prior uses he was in every one of them contending personally.

Mr. L. E. Lyon: Because he was named in the complaint and in the public use proceedings. If we look at the file you will find it was filed by B and W, Inc., and not by Kenneth A. Wright. He is not even a party to it.

The Court: Is there any contention? As I understand it, it is undisputed that Kenneth A. Wright transferred all his interest in any patent or any invention to this corporation B and W, Inc., is that correct?

Mr. Scofield: Insofar as his patents are concerned.

The Court: Am I correct in that?

Mr. L. E. Lyon: Yes, your Honor; you are correct.

The Court: Very well. Then the corporation is at liberty if it pleases to file this supplemental answer and counterclaim on perhaps the corporation alone.

Mr. Scofield: They are at liberty to do so, but they have chosen to put Mr. Wright in here. And I don't want him dismissed. There is no reason for him dismissing it because he has contended throughout these proceedings, your Honor, [4197]

The Court: Now on this question of parties, gentlemen the parties are here, we want everyone bound that can be bound. Of course anyone in privity with any party who is bound would be bound.

Mr. L. E. Lyon: Which one of these is the exhibit, Dick?

The Court: If these agreements to license these intervener plaintiffs provide that they are to be licensed under any new invention, any new patent issued to Hall, of course they should be parties.

Mr. Scofield: I was told this noon, your Honor, that the agreements did not include the improvements and that none had been licensed under the new patent as yet. Now I haven't checked the agreements.

Mr. L. E. Lyon: That is not true.

The Court: They are in evidence here, are they not?

Mr. Scofield: Yes, sir, they are in evidence. I haven't checked them.

Mr. L. E. Lyon: I think, your Honor, the agreement that exists between Hall and the Canadian corporation, for example, which started this matter off and which is Exhibit II, [4200] I believe—let's look at it—or QQ. And let's check this assertion.

May I have QQ or II, Mr. Clerk?

(The exhibits referred to were passed to counsel.)

Mr. L. E. Lyon: I think it is in evidence as a defendants' exhibit. It is Exhibit QQ, which I will place before your Honor.

Mr. Scofield: That has a termination date, has it not?

Mr. L. E. Lyon: The same thing was reiterated, as I believe, in QQ.

(The document referred to was passed to the court.)

Mr. Scofield: Those all terminate, your Honor.

Mr. L. E. Lyon: Sure, but the same thing is in effect for this year, according to your own pleadings.

Mr. Scofield: It goes out on December 31, 1952.

The Court: Is it intended to represent to this court that Mr. Hall does not intend to license the intervenors under this new letters patent?

Mr. Scofield: That is to be negotiated, your Honor. It is the very thing that is up now.

The Court: You may amend your supplemental answer and counterclaim, Mr. Lyon, but not to omit the defendant and counterclaim of Kenneth A. Wright, and you may include all of the parties to this action whom the counterclaim desires to [4201] name.

Mr. L. E. Lyon: That is all, so there will be no misunderstanding, it will be all of the parties named as plaintiff-intervenors at the present time.

The Court: All the parties to the action, including them whom the counterclaim chooses to allege is on opposing sides to this controversy. I take it that that, in effect, means only plaintiffs and intervenors?

Mr. L. E. Lyon: Plaintiff and plaintiff-intervenors.

The Court: Yes. You may amend it to include the question of infringement within the scope of the matters in controversy and any other particulars covered in your statement, with the exception of the omission of Kenneth A. Wright. Leave to dismiss Kenneth A. Wright from the supplemental answer and counterclaim is denied.

Mr. Scofield: Your Honor, may the plaintiffs have the privilege of filing this amendment to our complaint as an amendment to the complaint rather than under your Rule 14(d) so we won't have to retype the whole second amended complaint?

The Court: It is a supplemental complaint. It is something that has happened since the action began.

Mr. Scofield: Yes, sir, but under your rule here I understand that we must file a new pleading, re-type the whole pleading, unless we get leave of court.

The Court: Yes. That is correct. You have leave to [4202] file a supplemental complaint charging infringement of letters patent 2,671,515, Exhibit 286 here, and you may charge infringement against any party to this action.

Mr. Scofield: Very well.

The Court: Now I think we understand the issues tendered by these supplemental pleadings. Is there any evidence to be offered other than that which has been offered?

Mr. L. E. Lyon: I would like to enter a stipulation that the evidence already included may be considered as the evidence offered on behalf of defend-

ants under the issues as raised by the supplemental pleadings filed this day, and the answer to which is still to be filed.

Mr. Scofield: I will so stipulate. [4203]

* * *

Mr. Scofield: I would like to file, your Honor, the reply to the supplemental answer and counter-claim, that is, the plaintiff's reply.

The Court: Mr. Lyon expects to amend his, why do you not hold it? Serve Mr. Lyon with a copy——

Mr. Scofield: He has a copy. [4221]

Mr. L. E. Lyon: I have received a copy.

The Court: Well, you know what changes he plans to make.

Mr. Scofield: I haven't made a note of them. I will have to get them from the record.

Mr. L. E. Lyon: The record will be supplied to us this evening. It is daily copy.

The Court: Perhaps it will save some amendments if you hold it until you receive the other.

Mr. L. E. Lyon: There is one ambiguity which appears in the record at the present time and which I desire clarification on, and that is with respect to this matter of the further prosecution of this suit in Kansas.

Your Honor has stated that he would direct that an injunction be issued. Does your Honor desire me to prepare that injunction and present it?

The Court: I understood from Mr. Scofield that he would withhold any further prosecution.

Mr. Scofield: That is correct.

Mr. L. E. Lyon: He declined to withhold the

matter of service or the matter to require us to employ counsel in Kansas in order to get an arrangement for further time.

Mr. Scofield: I agreed to withhold prosecution in Kansas.

The Court: Does that mean that you will recall any [4222] instructions to serve process in the case?

Mr. Scofield: I don't think I can now. I think that that is probably under way. It probably was served today or will be served tomorrow.

Mr. L. E. Lyon: It wasn't served today.

Mr. Scofield: I don't think I can stop that at the present time. But I did agree and I will withhold prosecution.

The Court: Will you endeavor to stop the service of process?

Mr. Scofield: Yes, sir, I will communicate with my office tonight.

The Court: If process is served I think it will be necessary to issue an injunction. I do not like to do that unless it is necessary.

Mr. Scofield: I will see if I can get hold of that. [4223]

* * *

Mr. L. E. Lyon: Your Honor, yesterday I called the court's attention to the practice of the United States Patent Office in the issuance of patents after the payment of final fees, and the fact that the applicant has knowledge of [4271] the date of issuance of the patent immediately after payment of the final fee, and in this case had information as to

the exact date of issuance of this patent, Exhibit 286, prior to or on February 4th of this year.

That is established by the following, and I am reading Rule 314 of the Rules of Practice of the United States Patent Office, January 1, 1953, edition, page 89:

"Issuance of patents: Every patent shall issue within a period of three months from the date of payment of the final fee, which shall be paid not later than six months from the date on which the application was allowed and the allowance and notice of allowance sent, and if the final fee be not paid within the period, his patent shall be withheld."

In the absence of a request to suspend the issuance of the patent in three months, the patent ordinarily would issue in regular course in about five weeks. The issue closes weekly on Thursday, and the patents ordinarily bear date as of the fifth Tuesday thereafter.

May it be stipulated that that is the rule of the Patent Office?

Mr. Scofield: That is the rule, as I understand it.

Mr. L. E. Lyon: Also there is published in Washington, for the purpose of patent solicitors and those practicing before the Patent Office, the issue and closing dates, so [4272] that there will be no mistake; and this publication shows the last day of each week when a final fee may be paid to have the patent issue within a particular period of time.

You are familiar with that, I take it?

Mr. Scofield: I am familiar with the calendar.

Mr. L. E. Lyon: That calendar shows in small red "February 4" under the date of "March 9." That means, if the final fee is paid on February 4th, or between January 28th and February 4th, in the Patent Office, the patent would issue on March 9th.

So that in this case it is established by this calendar and this Rule that the final fee was paid to the Patent Office between January 28, 1954, and February 4th of this year, and immediately upon receipt of that final fee a receipt is sent out by the Patent Office which gives the patent number together with the date on which it will issue.

The Court: Is it so stipulated in this case?

Mr. Scofield: Yes, sir. Yes, sir.

Mr. L. E. Lyon: I will offer for the benefit of the record and to supplement my explanation the calendar as published, showing the issue and final-fee-payment dates, as the exhibit next in order.

The Court: Is there objection to the offer?

Mr. Scofield: No objection at all, your Honor.

The Court: Received in evidence. [4273]

Mr. Scofield: In fact, the only thing that delayed the payment of the fee was the fact that Mr. Lyon had not made this assignment to me.

The Court: By "this assignment" you refer to— •

Mr. Scofield: The one that your Honor prepared.

The Court: —the assignment that was made pursuant to the—

Mr. Scofield: Stipulated judgement.

Mr. L. E. Lyon: I believe the record should show that, pursuant to the stipulated judgment, the assignment has been delivered, has been executed by all of the parties, and an executed copy has been returned to us and that that matter is completely closed.

Mr. Scofield: That is at the present time.

The Court: Is a copy of that assignment in the record here now?

Mr. Scofield: No, your Honor, but I think it should be. I will have it photostated.

Mr. L. E. Lyon: I will give you my copy and I will offer it at the present time and ask leave to withdraw it.

The Court: The calendar offered and received would be Defendants' Exhibit——

The Clerk: HS.

Mr. Scofield: What is that, Mr. Clerk?

The Clerk: HS. [4274]

Mr. Scofield: HS?

The Clerk: Yes, sir.

(The document referred to, marked Defendants' Exhibit HS, was received in evidence.)

The Court: The copy of the assignment pursuant to the stipulated judgment relative to the agreement of September 15, 1944, will be received in evidence as Defendants' Exhibit HT.

(The document referred to, marked Defendants' Exhibit HT, was received in [4275] evidence.)

The Court: Before you move to that one, would you mind now telling me just as briefly as you can what about Hall Exhibit 286, where that is invention where the Wright patent is not? [4452]

Mr. Scofield: I think that you should hold the Hall 286 patent valid because the patent is a very narrow patent, specific to a particular device, and there has been nothing shown in this art, in the publications or any place in the literature, that precedes it.

The Court: In other words, you are suggesting it should be limited to the precise device described in the application.

Mr. Scofield: It must be, your Honor, and all patents must be. The claims of a patent—

The Court: We are referring to the range of equivalents now, I suppose.

Mr. Scofield: The range of equivalents in this patent is narrow because the patent is narrow.

The Court: Then, we will say "nil"?

Mr. Scofield: Nil. [4453]

* * *

The Court: You say that that exhibit is the apparatus described in Exhibit 286?

Mr. Scofield: This exhibit here?

The Court: Yes.

Mr. Scofield: Insofar as these claims are concerned, exactly that.

The Court: What number is that exhibit?

Mr. Scofield: That is 88, your Honor. That is one of the—

The Court: Is it constructed in the same manner as this apparatus?

Mr. Scofield: Exactly the same. But the distinction I was drawing, you see, insofar as the angularity of the wires, insofar as the collar is concerned, insofar as the fastening of the wires, everything is the same except in that drawing there the coils are radial. Do you notice that?

And we also in that particular patent showed tapered [4461] coils. That was a device of Hall's that he never could wind those wires tight enough at the end to make those coils that way as shown in that scratcher.

The Court: Do you mean to say it was impossible to manufacture what is disclosed by these drawings in Exhibit 286?

Mr. Scofield: No, as far as the tight pyramid coil is concerned. You see in one of the figures there, there is shown a pyramid type of coil.

The Court: That is Figure 6.

Mr. Scofield: Yes. And in order to coil those wires or to wind those coils, you have to bring them right down to a point at the top, and it was found that it was impossible to wind a coil that was satisfactory in that fashion.

The Court: There is no invention claimed on the manner in which the coils are wound?

Mr. Scofield: No, sir, there is no invention on that.

The Court: The invention claimed is in the invention of those whiskers or wires, or in the manner the bristles leave the periphery of the collar?

Mr. Scofield: That is the invention in this particular patent. That is the invention.

The Court: If someone else changed the angle of them he would not infringe?

Mr. Scofield: They would infringe. There is no angularity—— [4462]

The Court: In other words, Hall claims a monopoly on everything except the 90-degree angle, is that it?

Mr. Scofield: What it says in the patent. In the claims it says that:

“The stiff wire whiskers each flexibly attached at one end to said support and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker”—

The Court: Doesn’t that describe the Wright apparatus?

Mr. Scofield: No. No, he does not have any sidewise inclination at all.

The Court: He has radial inclination, doesn’t he?

Mr. Scofield: Well, that is not sidewise.

The Court: No. “Sidewise” means anything that is off the 90-degree angle.

Mr. Scofield: That is right, with respect to the radius, it says in the claim.

The Court: So what you are stating—I want to be sure I understand you——

Mr. Scofield: Yes, sir.

The Court: —is that Wright has a monopoly

if the wires protrude radially, that is, at a 90-degree angle from the periphery of the collar. [4463]

Mr. Scofield: He would have that monopoly if it has not already been shown in the art; that is right.

The Court: Assuming—

Mr. Scofield: Yes, sir; assuming that was not already invented.

The Court: State it this other way: Where the wires extend from the periphery of the collar at a 90-degree angle, Hall does not claim any monopoly?

Mr. Scofield: That is right.

The Court: But where it changes a degree to right or left, he claims the monopoly?

Mr. Scofield: Yes, sir.

The Court: Right on up to the eighty-ninth degree?

Mr. Scofield: That is right, if all the wires have the same angularity or substantially the same angularity.

The Court: Suppose some man comes along and decides he will put every other whisker at a different angle, would he infringe Hall?

Mr. Scofield: That would be a question of equivalents we are entitled to. [4464]

* * *

Mr. Scofield: Your Honor, I will report that I got in touch with my office again, or they called me this morning, and the service has been held up in Kansas.

The Court: Very well. There will be no action taken in that case—

Mr. Scofield: No, that is right.

The Court: —pending the determination of this case—

Mr. Scofield: That is right.

The Court: —without the necessity of an injunction, as I understand it.

Mr. L. E. Lyon: I would like to ask, and for a matter of record, as to whether there has been any other publicity given to the issuance of this patent No. 286, such as sending copies of it or notices of it to anybody of any kind.

Mr. Scofield: No, there has not. There has not, to my knowledge.

Mr. L. E. Lyon: Then I deem it the injunction stands against any publicity, the same as with respect to all other matters.

Mr. Scofield: Why should there be an injunction, your Honor, against that patent?

The Court: You are referring to the injunction that was issued heretofore? [4521]

Mr. L. E. Lyon: Yes, your Honor, against any publicity in this suit with respect to any issue concerning this suit until the suit has been terminated.

The Court: The restraining order heretofore issued is in force and effect pending the determination of the case.

Mr. Scofield: Well, it is in force and effect, your Honor, with respect to those matters that you enjoined us against.

The Court: With respect to any matter involved in this litigation.

Mr. Scofield: That includes any publicity with respect to the patent in suit?

The Court: Whatever the injunction covers.

Mr. L. E. Lyon: Any patent in suit.

The Court: Anything that is involved in this case. The injunction is intended to stop trying the case to the trade instead of to the court.

Mr. Scofield: Yes, I appreciate that. [4522]

* * *

DEPOSITION OF ALFRED M. HOUGHTON
first having been duly sworn by the Notary Public,
was examined and testified as follows:

Direct Examination

By Mr. Scofield:

Q. Please state your name.

A. Alfred M. Houghton.

Q. Are you the same Alfred M. Houghton who gave a deposition in this case in January of this year? A. Yes—in 1950 it was.

Q. What was the date of that deposition, do you have it before you there?

A. January 9, 1950.

Q. Are you the patent attorney for Gulf Oil?

A. Yes, I am patent counsel for Gulf Oil Corporation.

Q. What do your duties include, Mr. Houghton, insofar as Gulf Oil is concerned?

A. I represent and advise Gulf in all matters having to do with patents, and also I advise them in connection with other matters, such as contracts and the like, acting as counsel for them in very many different matters.

Q. Do you handle any of the Gulf Oil Com-

(Deposition of Alfred M. Houghton.)

pany's foreign patent applications? A. I do.

Q. Do you handle all the foreign applications filed [2*] for Gulf Oil?

A. I supervise the filing of all of them.

Q. Do you counsel with the executives of Gulf Oil with regard to foreign patent matters?

A. Yes, I discuss them with them.

Q. Where are the headquarters of the Gulf Oil Company?

A. It is a corporation of the Commonwealth of Pennsylvania, with its office in the Gulf Building, Pittsburgh, Pennsylvania, about Seventh Avenue and Grant Street.

Q. Does the Gulf Oil Company operate in Canada?

A. I do not think so, as Gulf Oil Corporation.

Q. Do you know under what company name they operate in the Dominion of Canada?

A. No, I am not sure of that. I know they have some subsidiaries, and I think those subsidiaries are corporations of the United States which, perhaps, are registered to do business in Canada.

Q. Do you know whether the Gulf has production in Canada?

A. Not of my knowledge, but I have heard so.

Q. Do you know a Mr. Bohart?

A. I know of Mr. Bohart, yes.

Q. Do you know where he is located?

A. My impression is that he is either in [3] Tulsa, Oklahoma, or at Houston, Texas, I am not

(Deposition of Alfred M. Houghton.)

sure at this moment which I have very little contact with him.

Q. To your knowledge, do you know whether or not he has anything to do with the Gulf Oil Canadian operations?

A. I would gather, yes, from information which has come to me from time to time.

Q. I put before you, Mr. Houghton, a United States patent, No. 2374317, which is in evidence in this case as Plaintiff's Exhibit 38. You know of that patent, do you not? A. Yes.

Q. How long have you known of the patent?

A. For quite a long time, I imagine, shortly after its issuance.

Q. You have had occasion, then, to familiarize yourself with the disclosure of the patent?

A. Yes. [4]

* * *

Q. I put before you a Canadian patent, No. 463822 issued on March 21, 1950, which has been marked for identification in this case as Defendants' Exhibit Q2.

Mr. Lyon: I believe that is an erroneous statement, because it has never been offered as Exhibit Q2.

Mr. Scofield: I did not say it has been offered; I said it had been marked for identification.

Q. (By Mr. Scofield): Do you have any knowledge of that patent? A. Yes. [6]

Q. When did you first learn of that patent?

A. Shortly after its issuance. It is our custom

(Deposition of Alfred M. Houghton.)

here to read the Canadian Gazette as it is issued weekly, and notice of this patent in that Gazette was observed by us shortly after the Canadian Gazette was received here, which was shortly after the date of the issuance of the patent, to wit, March 21, 1950.

Q. Does this Canadian patent bear on its face any indication or do you know whether it has any relationship to the Wright patent No. 2374317?

A. It is all printed on the face of the patent. The Canadian patent marked for identification as Exhibit Q2 bears a note that the convention date is December 10, 1940, United States of America, Serial No. 369389, and that serial number is the same serial number of the Wright application filed December 10, 1940, which matured into United States patent 2374317, dated April 24, 1940, Plaintiff's Exhibit 38.

Q. After you learned of this Canadian patent, 463822, Exhibit Q2 for identification, did you make any investigation of it?

A. Yes; we read it, considered it, tried to understand it, noticed the claims and posted ourselves to the extent we thought necessary in the event we should become interested in it at some time. [7]

Q. Did you call the issuance of the patent to the attention of the Gulf Oil Company?

A. I should say I probaly did. I would normally do that kind of a thing, trying to keep them posted as to the patent situation.

(Deposition of Alfred M. Houghton.)

Q. Who in the Gulf Oil Company would you communicate such matters to?

A. Well, I do not know in this case exactly to whom I called the attention of this patent, but it was probably Dr. B. B. Wescott of Gulf Research and Development Company, or Mr. Leslie Vollmer there.

Q. Where are those gentlemen located?

A. They are located with Gulf Research and Development Company, a subsidiary of Gulf Oil Corporation, having its research laboratories at Harmarville, Pennsylvania.

Q. To your knowledge, did the issuance of this Wright patent, 463822, have any effect on the purchase by Gulf Oil of the scratcher equipment which they were purchasing in Canada?

A. No, I don't think it had any bearing on that.

Q. I show you Canadian patent 472221, marked for identification in this case as Defendants' Exhibit Q1. Have you any knowledge of that patent?

A. Yes. This came to our attention in the same way as the patent marked for identification Exhibit Q2. It was [8] published in the Canadian Gazette as a reissue, and we ordered copies and studied it.

Q. Did you make any investigation of this Wright reissue patent after it came to your attention?

A. Yes. In the normal course of work, being interested in this situation, we compared it with the Canadian patent 463822 to determine the difference in the claims over that patent.

Q. What relationship did you find that this re-

(Deposition of Alfred M. Houghton.)

issue patent 472221 bore to the former Canadian patent 463822, if any?

A. Well, the comparison of the two will speak for itself.

My recollection, without now studying these patents, is that we found that claims or some of them in some respects were slightly different from the claims in 463822.

Q. Did you find that the patent 472221 was a reissue of 463822?

A. Well, it purports to be.

Q. Did you find from your investigation that the reissue patent bore any relationship to the United States Wright patent 2374317?

A. It was very much like it, except that it appears to contain some claims which do not appear to be in the Wright patent 2374317. [9]

Q. Did you find from your investigation that the Wright reissue bore any relationship on its face to the earlier United States Wright patent 2374317?

A. Well, that also speaks for itself, 472221, on its face, is stated to be a reissue patent of 463822.

Q. My question, Mr. Houghton, was whether or not it bore any relationship on its face to the United States Wright patent 2374317?

A. Well, I thought I was going to bring that out. I was going to add more to my statement.

Q. I am sorry I interrupted you.

A. Being a reissue of the Canadian patent 463822, and that being based on convention applica-

(Deposition of Alfred M. Houghton.)
tion claiming United States Serial No. 369389, and
United States Serial No. 369389 issuing into United
States patent 2374317, the relationship is apparent.

Q. Well, do you find on the reissue Wright patent,
the Canadian patent, the filing date of the
United States application which matured into the
United States Wright patent 2374317?

Mr. Lyon: That is asking the witness to com-
pare documents. It is objected to on that ground.
The documents speak for themselves. I do not see
any reason for asking this witness to make a com-
parison of documents, which anyone can make. [10]

The Witness: I do not see any printing, any-
thing of that sort, but it is obvious to anyone that
my explanation is right. The reissue, 472221, is a
reissue of another Canadian patent, 463822, and
that is based on the application which matured
into the United States patent 2374317.

Q. (By Mr. Scofield): On the syllabus heading
of reissue patent 472221, do you find the filing date
of the United States Wright patent, December 10,
1940?

A. Yes, I do see it now. It says on the reissue
application October 25, 1950, Serial No. 607200 in
the United States December 10, 1940, which is the
filing date of the application which matured into
United States patent 2374317.

Q. Did you receive any notice from W. & B. or
Kenneth Wright of the issuance of this reissue
patent, and I am referring to the Canadian reissue?

A. My memory is that after we had found it in

(Deposition of Alfred M. Houghton.)

the Gazette, Mr. Wright sent me copies of claims of Canadian patents which had been issued him, and I think that they were the claims in Canadian patent 463822 of March 21, 1950, and Canadian patent 472221 which issued March 13, 1951. That is my best memory as to that.

Q. Do you have a record of when those claims were sent to you by Mr. Wright? [11]

A. I am sure that they must be here. I will look it up.

Yes, I have a letter here dated April 3, 1951, directed to me, and signed B. & W., Inc., by K. A. Wright. [12]

Q. May I see the letter, please?

A. I will read it into the record, if you wish me to.

Q. In view of the fact that the letter has the date stamp of your office on it, would you object to my offering a photostat of it in the record as an exhibit for identification?

A. No, I have no objection.

Q. Would you like to have the reporter mark the letter dated April 3, 1951, on the letterhead of B. & W., Inc., addressed to Mr. A. M. Houghton, and signed K. A. Wright, as Plaintiff's Exhibit 73 for identification, and it is my understanding, Mr. Houghton, that with this Wright letter there was enclosed the claims of this reissue Canadian patent, Exhibit Q-1 for identification?

A. That is my recollection.

(Deposition of Alfred M. Houghton.)

(The letter referred to was marked Plaintiff's Exhibit No. 73, for identification.)

Q. (By Mr. Scofield): Do you have the copies of the claims in your file that were—

A. Oh, yes, I have them here.

Q. I would like to have the copies of the claims marked as Plaintiff's Exhibit 73-A for identification, and Plaintiff's Exhibit 73-B for identification.

(The claims referred to were marked Plaintiff's Exhibits 73-A and 73-B [13] for identification.)

The Witness: I am willing that you make copies of these and use them as you see fit.

Q. (By Mr. Seofield): I thought—

A. But I object very seriously to letting my files go out of my office for that purpose, so arrangements will have to be made with your reporter that he copy them here.

Q. Well, would it be satisfactory to you to have photostats made and let me pay for the copies of the photostats? You have them made from your office if you would rather not deliver them.

A. Yes, I will attend to that for you. I will have photostats of these two papers made and deliver them to the reporter, and would expect you to pay for them.

Q. I shall try to fulfill your expectations.

On the receipt of this letter from Mr. Wright, what did you do next? Did you make further investigation of this reissue patent?

(Deposition of Alfred M. Houghton.)

A. I do not think so; I had already considered the patent. I note that in my receipt date stamp, which is April 9, 1951, on this letter, there is in the space "Refd To," there is a notation "JHL," so that it was referred to Mr. James H. Littlehales, for whom these initials stand, for his consideration. The claims being the same as those I had already considered, I do not think we did anything [14] further about it.

Q. Had you prior to the receipt of Mr. Wright's letter on April 3, 1951, notified anyone in the Gulf Oil Company with regard to the Wright Canadian patent 472221?

A. I believe I had, because we knew of this patent before we received these copies of the claims.

Q. With whom did you communicate information that the reissue patent, the Wright reissue, had been granted in Canada before April 3, 1951?

A. Oh, my, I don't know the particular individual, and I don't know the exact date. I can probably refresh my recollection by going through correspondence, if I have any, on the subject.

It was my custom to keep Mr. Wescott and Mr. Vollmer posted in all matters of this sort, because I knew they were interested, and if I wrote a letter it was probably directed to Dr. Paul Foote, who is executive vice president of Gulf Research and Development Company.

Q. Do you have a record of communicating with him prior to April 3, 1951?

A. What was that date?

(Deposition of Alfred M. Houghton.)

Q. April 3, 1951, the date of Mr. Wright's letter.

Mr. Lyon: Mr. Houghton, just so there may be no mistake, where is that letter from Mr. Wright? The question asked you was prior to April 3. Your receipt stamp shows [15] that you received it April 9.

Q. (By Mr. Scofield): You can answer the question, then, as to April 9, if anytime prior to April 9 you had communicated with Gulf Oil.

A. The record, so far as I now can see, shows the first written communication to be to Dr. Paul D. Foote, dated May 10, 1951, which is subsequent to the receipt of these claims from Mr. Wright, with his letter of April 3, 1951.

Q. Do you have a copy of a letter that you wrote to Mr. Foote on May 10, 1951?

A. Yes, that is what I am looking at now, to refresh my recollection.

It relates to quite a number of other matters, but there is a statement in it. "Wright has obtained Canadian patent 472221 (copy enclosed) issued March 13, 1951, on well-conditioning method which includes the step of cementing. It is interesting to note that the Canadian patent departs in this respect from the disclosure and claims of the Wright U. S. patent on well-conditioning. In view of the issuance of this patent to Wright, it is somewhat problematical that Hall can patent the same or substantially the same cementing method in [16] Canada."

Q. Was that the only mention in your letter to

(Deposition of Alfred M. Houghton.)

Mr. Foote of May 10, 1951, of the issuance of the Wright reissue patent No. 472221? A. Yes.

Q. Are there matters in that letter that are of such nature that you would rather not have the letter photostated as an exhibit in this case?

A. Yes. There are matters there that I don't think are pertinent to the issues here, and which are in the the nature of confidential communications to my client.

The letter refers to matters I had heard—maybe all hearsay—I just wrote it trying to keep Dr. Foote and his associates posted.

Q. Are there any other references in the letter to the Hall-Wright litigation? A. Oh, yes.

Q. Would you have any objection to reading such parts of the letter that have reference to the Hall-Wright matter?

A. The Gulf Oil Corporation and Gulf Research and Development Company have been very much disturbed by the unsettled patent situation between B. & W., on the one hand, and Weatherford Company, on the other hand, and, therefore, as any information comes to me, no matter of what kind, I try to keep them posted. [17]

* * *

Q. (By Mr. Scofield): In view of Mr. Lyon's objection, would you have any objection to letting me offer a photostat of this letter as an exhibit for identification in this case?

A. No. I think it will be harmful to your case, but go ahead.

(Deposition of Alfred M. Houghton.)

Mr. Scofield: All right. It is requested that the reporter mark the letter for identification as Plaintiff's Exhibit 74. [18]

(The letter referred to was marked Plaintiff's Exhibit No. 74, for identification.)

The Witness: May I make a statement?

Q. (By Mr. Scofield): Yes, go ahead.

A. This letter should be considered from the standpoint I just explained. It may have some opinions of mine as to the patent situation. It may be based on things that I had heard, matters which I had not definitely checked, and should be read in that light.

Q. Well, I am sure that the Court, in reading the letter, will view it with the suggestions that you have made.

Mr. Lyon: In view of the witness' statement, we renew our objection to any consideration of the letter as incompetent, irrelevant, and immaterial, being based on hearsay.

Q. (By Mr. Scofield): Did you receive from Mr. Foote any reply to this letter of May 10, 1951?

A. Yes, I did.

Q. Marked here as Plaintiff's Exhibit 74?

A. Yes. I received a memorandum from him dated May 21, 1951, referring to the letter in which he says:

"It is our understanding that you think this [19] patent may be ignored despite the fact that it

(Deposition of Alfred M. Houghton.)

would be infringed by the use of Weatherford scratchers and centralizers in Canadian Gulf's casing cementing operations. Wright's Canadian patent is considered invalid since it is based on his U. S. method patent which does not cover casing cementing."

Q. Would you have any objection to my offering a photostat of that letter or marking it for identification?

A. Yes, I would; but I suppose I have to give it to you if you want it. The fact is that the letter was an entire mistake. His understanding, stated in his letter that this patent may be ignored, was erroneous. I had not said so.

Q. Well, I think the letter will stand for itself, and I should like to have the reporter mark the letter as Plaintiff's Exhibit 75 for identification.

A. Yes.

(The letter referred to was marked Plaintiff's Exhibit No. 75, for identification.)

Q. (By Mr. Scofield): Did you make any reply to Mr. Foote's letter of May 21, 1951, marked here as Plaintiff's Exhibit 75 for identification? [20]

A. I think I must have. I would not let a misunderstanding of that sort stand.

Yes, I did, on May 28, 1951, I wrote to Dr. Foote again, replying to his letter of May 10—no, replying to his letter of May 21, in which I stated:

"I regret that my letter of May 10 led you to the understanding that the recent issued Canadian patent to Wright may be ignored, despite the fact that

(Deposition of Alfred M. Houghton.)

it would be infringed by the use of Weatherford scratchers and centralizers in Canadian Gulf casing cementing operations," and then I go on to say that although B. & W. has not indicated an intention to enforce this patent against Gulf, it is, under the circumstances, in position to do so.

Q. I should like to have the reporter mark that letter as Plaintiff's Exhibit 76 for identification.

A. You will understand it gives my interpretation of an opinion regarding this patent. It sort of gives the history of the situation with respect to the patent, and it includes the sentence, "Accordingly, the claims of the reissue patent, in my judgment, cover the use of Weatherford scratchers in casing cementing operations."

At that time I was not considering the validity of the patent and had no definite knowledge of anything which would invalidate it, but I seemed to be interested [21] primarily in whether or not it was entitled to the convention date, as claimed, thinking that if it was not, then I might be able to find some anticipating art. After a study I decided it was entitled to the convention date.

Q. When you—pardon me, are you through?

A. Yes.

(The letter referred to was marked Plaintiff's Exhibit No. 76, for identification.)

Q. (By Mr. Scofield): When you investigated this Wright reissue patent, and before you wrote to Mr. Foote with respect to the patent, did you

(Deposition of Alfred M. Houghton.)
give any consideration to the Hall-Wright contract
in this connection? A. Yes, I think I did.

It occurs to me now that before my letter to Dr. Foote calling attention to this Canadian patent—

Q. That is May 10, 1951.

A. All right—I had mentioned it on the phone to Mr. Leslie Vollmer, and it is my recollection that this was before I received the copies of the claims from Mr. Wright.

I remember that Mr. Vollmer seemed to have difficulty in understanding this question of convention, and he seemed to think that if in the original United States application, [22] although disclosed certain matter was canceled, that it would bind the prosecution in Canada, and that Wright would be estopped to claim that matter in Canada. In other words, he thought, as I understood him, that the patents had to sort of exactly correspond, and that Wright could not claim convention date because of the prosecution in the United States.

I did not agree with that, and tried to explain to him that if a complete copy of the Wright original application maturing into the Wright U. S. patent 2374317, as filed in Canada or as relied upon, disclosed the matter claimed in Canada, that as far as I could see, Wright was entitled to the benefit of that date. [23]

* * *

Q. Did you communicate further with Mr. Foote

(Deposition of Alfred M. Houghton.)
after your letter of May 28, 1951, with respect to
this Wright reissue patent?

A. I may have. Yes, I did on June 20, 1951; I communicated with him again on this subject, referring to an article by Barkis and Wright published in International Oil, October, 1941, which he had run across, and which he sent me.

Q. What is the date of that letter?

A. June 20, 1951; and I told him that I had made a more thorough study of the Wright Canadian patent and its relationship to the Wright United States patent, as a result of which it was my conclusion that Wright is entitled to rely upon the filing date of his U. S. case, namely, December 10, 1940, since his Canadian application was properly filed under the international convention, and in view of that conclusion, the October, 1941, publication [24] would not, in my opinion, be a reference upon which we could rely in defense of a suit for infringement of the Wright patent.

I said, accordingly, that I was still of the opinion that we should respect the patent and not open ourselves to a charge of infringement, but allow Mr. Hall to take the initiative in attacking the patent if he considers it desirable to do so.

Q. I believe you indicated in your answer that there was a publication referred to in this letter?

A. Yes. I said it was International Oil of October, 1941. I don't think I gave you the title, "Casting Movement While Cementing." That is the title.

Q. That is or is not the title?

(Deposition of Alfred M. Houghton.)

A. That is the title.

Q. Is there a copy of the publication attached to your letter copy?

A. Yes, sir. It is attached to a letter from Dr. Foote when he forwarded it to me, a very interesting publication.

Q. Now, is this letter of June 20 a letter which you wrote to Foote or from Foote to you?

A. The letter of June 20 is a letter I wrote to Foote acknowledging receipt of the publication.

Mr. Scofield: I should like to have the reporter mark [25] the letter dated June 20, 1951, as Plaintiff's Exhibit 77 for identification.

(The letter referred to was marked Plaintiff's Exhibit No. 77, for identification.)

Mr. Scofield: I should like to have the reporter mark the copy of the publication as Plaintiff's Exhibit 77-A for identification.

(The publication referred to was marked Plaintiff's Exhibit No. 77-A, for identification.)

Q. (By Mr. Scofield): When you wrote this letter of June 20, 1951, had you at that time had any communication with the firm of Lyon and Lyon or any of the members thereof?

A. Oh, probably; they dropped in to see me once in a great while, just as you do. Sometimes they, as well as you, send me copies of decisions in Patent Office interference matters.

Q. Did you see anybody from the firm of Lyon and Lyon during June, 1951?

(Deposition of Alfred M. Houghton.)

A. I think so. I am not sure; I will have to check up on that.

Q. Do you have a record of that there?

A. On June 19, I had a letter from Lyon and Lyon, [26] stating:

"When I was last in Washington I stated that I would advise you with respect to the Hall vs. Wright case set for today, June 19. The case was called today by the Court."

I do not know what else this has to do with him—oh, yes. He says:

"I enclose a decision of the Commissioner of Patents in the Hall vs. Wright interference directing the primary examiner to finally reject the pending Hall application, Serial No. 55619, thereby concluding that no patent should be granted to Hall upon his application."

Q. Is that a letter from Mr. Leonard Lyon to you?

Mr. Lyon: No, it is a letter from Mr. Lewis Lyon.

The Witness: No, it is not.

Q. (By Mr. Scofield): That is a letter from Mr. Lewis Lyon to you, Mr. Houghton?

A. Yes.

Q. Now, had you seen Mr. Lewis Lyon or Mr. Leonard Lyon during the month of June, 1951?

A. I don't know, but this letter starts out to say:

"When I was last in Washington I stated I would advise you with respect to the Hall vs. Wright [27] case," so he probably was down in Washington

(Deposition of Alfred M. Houghton.)

sometime previous to that when he made that statement.

Q. Do you now have any recollection of a visit with Mr. Lewis Lyon prior to this date of June 19, 1951?

A. Oh, no definite recollection of the time or what was discussed. I see him very seldom.

Mr. Scofield: I should like to have the reporter mark the letter of June 19, 1951, written by Mr. Lewis Lyon to Mr. Houghton, as Plaintiff's Exhibit No. 78 for identification.

(The letter referred to was marked Plaintiff's Exhibit No. 78, for identification.)

Q. (By Mr. Scofield): Now, is it my understanding that he enclosed a copy of some Patent Office paper with that letter? [28]

A. Yes. A copy of the decision of the Commissioner of Patents in the Hall v. Wright interference, No. 84411.

Q. Well, I think that that paper has already been marked for identification in the interference as one of the defendants' exhibits, so it will not be necessary to make a copy of that paper—

* * *

Mr. Scofield: I believe it is in evidence as your exhibit, or it is marked for identification as your Exhibit T, so I do not believe it will be necessary to duplicate that exhibit.

Q. (By Mr. Scofield): Did you have any other

(Deposition of Alfred M. Houghton.)

communication with Mr. Foote or with the Gulf Oil or Gulf Research? A. Yes. I wrote—

Q. After this June 19th letter?

A. Yes. I wrote to Dr. Foote on June 21, advising him about the decision, and explaining it in part, just to keep him posted. [29]

Mr. Scofield: I would like to have the reporter mark the letter of June 21, 1951, from Mr. Houghton to Dr. Foote, as Plaintiff's Exhibit 79 for identification.

(The letter referred to was marked Plaintiff's Exhibit No. 79, for identification.)

The Witness: It refers to Wright's attorney advising me that the California suit had been postponed. I did not send him a copy; I just discussed it.

Q. (By Mr. Scofield): Do you find in your file any further communication with Gulf Research & Development or any communication from them after June 21, 1951, with respect to this Hall matter or the Canadian situation?

A. After June what?

Q. 21, I believe your last letter was, was it not?

A. Yes. On July 17, 1951, I wrote to Dr. Paul D. Foote, again referring to that decision denying Hall a right to a patent, and instructing the examiner to finally reject the claims; and apparently somebody had advised me that Hall had filed a petition for reconsideration. I think it was you, Mr. Scofield.

(Deposition of Alfred M. Houghton.)

Mr. Scofield: I would like to have that letter marked as Plaintiff's Exhibit 80 for identification.

(The letter referred to was marked [30] Plaintiff's Exhibit No. 80, for identification.)

The Witness: This is just resulting in opening up all of my files, and I consider a lot of this confidential communications.

* * *

Q. Well, I think that the Court will take that into consideration in reading these letters, Mr. Houghton. Do you find any communication after July 17, 1951?

A. From whom and to whom?

Q. Between you and Gulf Research.

A. Yes. Here is a letter of July 24, 1951, which appears [31] to be the next one. It is to Dr. Foote, entitled this subject.

Q. Was this a letter from you to Dr. Foote?

A. Yes; and it relates to an entirely different matter. You will have to take my word for that. But as long as you appear to be interested whenever I saw Mr. Lyon, it does make reference to the fact that Mr. Wright and Mr. Lyon were here the day before, which would be July 23, 1951—

Mr. Lyon: July 23?

The Witness: July 23, 1951.

Mr. Lyon: Pardon me, I thought you said July 22nd.

Q. (By Mr. Scofield): Had you heard from Mr. Lyon prior to this visit in any way?

(Deposition of Alfred M. Houghton.)

A. Mr. Lyon phoned me around July 19. Mr. Littlehales of my office took the message, that he would like to see me Monday morning, July 23.

Q. Do you know whether that was a phone call that was made here in Washington, or was it a long distance call?

A. The memorandum says that "Mr. Lyon phoned me today"—that being Mr. Littlehale's—no, it was my initials which are on it, apparently. I received the call. It says that he "phoned me today at 3:30 p.m., from Los Angeles, he would like to see me Monday morning next, July 23." [32]

Q. Did he indicate in that phone call what he wanted to see you about?

A. I don't think so. I imagine it was this other matter that we were referring to which, as far as I can see, has nothing to do with this situation.

Q. Did Mr. Wright and Mr. Lyon come on and have a meeting with you?

A. Yes, they did.

Q. On July 23, 1951? A. Yes, they did.

Q. Did you hear from Dr. Foote on any other occasion during July, with respect to the Wright Canadian situation?

* * *

Q. Did you receive a copy of a letter that Mr. Foote wrote to Mr. Bohart? A. About when?

Q. On or about July 23, 1951.

A. Yes, there is a letter of July 23, 1951, or a memorandum from Dr. Paul D. Foote to Mr. P. H. Bohart.

(Deposition of Alfred M. Houghton.)

Q. How is that name spelled?

A. B-o-h-a-r-t. [33]

Q. Was that received with a letter from Dr. Foote? A. No, apparently not.

Q. What is the date of that letter from Dr. Foote to— A. July 23, 1951.

Q. Does that pertain to this Canadian situation?

A. Yes; it refers to the Canadian patent 472221, and states that, "After study Mr. Houghton has reached the opinion that this patent for cementing casing covers the method casing that is being used in Gulf's Canadian operations. Therefore, the use of scratchers other than those sold by B. & W., Inc., for casing cementing in Canada would be an infringement of the Wright Canadian patent. Mr. Houghton has the further opinion that we should respect the Wright Canadian patent and not open ourselves to a charge of infringement. For the time being at least it is indicated that only B. & W. scratchers should be used for Gulf's casing cementing operations in Canada."

Mr. Scofield: I should like to have the reporter mark that letter as Plaintiff's Exhibit 81 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 81, for identification.)

Q. (By Mr. Scofield): Did you have a conference in Pittsburgh some time in August, at which time this Canadian situation was [34] considered by the Gulf Oil Company?

(Deposition of Alfred M. Houghton.)

A. What time are you talking about now?

Q. In August, 1951. Was there a conference in Pittsburgh? A. Yes.

Q. About what date was that, Mr. Houghton?

A. Around August 20, 1951.

Q. Do you have any record of who attended that conference? A. Yes, I do.

Q. Who was there, please?

A. Mr. P. O. Settle, Assistant General Counsel of the Gulf Oil Corporation; Dr. B. B. Wescott, of Gulf Research & Development; Mr. Leslie Vollmer, of Gulf Research & Development; Mr. James H. Littlehales, of the Patent Department, and myself.

Q. Is Mr. Littlehales the same Mr. Littlehales, who sits by your side here now?

A. Yes, sir.

Q. Did you make a report to Mr. Foote after the meeting with respect to what was considered?

A. Yes, sir; I did.

Q. What was the date of that report?

A. August 21, 1951.

May I volunteer a statement here? I don't know how far [35] I can go in doing that kind of thing.

Q. Well, I would prefer if you did not make a statement other than answer the question, Mr. Houghton. I am sure that Mr. Lyon will not want anything on the record other than what pertains to our particular matter here under consideration.

A. Well, we did have that conference up there on August 20, and I reported the results to Dr.

(Deposition of Alfred M. Houghton.)

Foote on August 21, and the conference was had as a result of my calling Dr. Wescott a few days before, stating I was very much fed up with this whole situation. I was being harassed by the attorneys for the respective parties, particularly Mr. Scofield for Hall, apparently in an endeavor to try to persuade me to make reports favorable to one side or the other, and you were down here to see me somewhere around that time, and I told you that I was going to have such a conference and try to settle this matter once and for all as to the stand we could take, at least temporarily, in this very complicated situation.

Q. Do you have any record of my being in Washington, during the months of either July or August of 1951, in your file?

A. No; I only have a recollection that you were here. I don't know that there is any record here of that. I have not seen it as I went through these papers. We discussed the [36] matter thoroughly.

Q. Do you have a definite recollection now—

A. And I was pretty well peeved at the whole situation, and I thought the tendency here to use a nebulous patent situation was far beyond the scope of what patents should be used for.

Q. Do you have now a definite recollection that I personally interviewed you or met with you during the months of July or August, of 1951?

A. I have a recollection of such a meeting. As to the exact date, I don't know, but I reason out it

(Deposition of Alfred M. Houghton.)

must have been at that time because I know it was shortly before I went up to Pittsburgh. The reason I remember that is I told you I was going up there, and you phoned me once or twice to see what was the result of the meeting.

Q. Well, is it your recollection that these conversations between you and me were personal conversations or by long distance phone?

A. The latter ones were long distance phone, but the first one that I am referring to was here in my office. You were here.

Q. You do not have any record of when that was?

A. I don't find any record of the exact date of that.

Mr. Scofield: I would like to have the reporter mark the letter of August 21, 1951, as Plaintiff's Exhibit 82 for [37] identification.

(The document referred to was marked Plaintiff's Exhibit No. 82, for identification.)

Q. (By Mr. Scofield): I think in a previous answer you indicated that there was some particular circumstance that provoked the meeting on August 20. Do you have any recollection as to just what did bring about that meeting that you had in Pittsburgh?

A. Yes. I was being very much provoked at this situation. It was interfering with my business constantly, and I was getting a little tired of taking all the responsibility of rendering these opinions and

(Deposition of Alfred M. Houghton.)

everything, and I wanted to confer with the Law Department, which was then represented by Mr. P. O. Settle, the Assistant General Counsel, and with Dr. Wescott and Mr. Vollmer, to see if we couldn't reach some decision to take a stand in this matter, adopt a policy, at least temporarily, and to relieve myself of this constant interference; and I called Dr. Wescott making that suggestion for a conference, and he arranged it, and it was had, as a result, on August 20, 1951.

Q. Getting back to this meeting that you had with Mr. Wright and Mr. Lewis Lyon on July 23, I believe that was Monday? [38] A. Yes.

Q. Did either Mr. Lewis Lyon or Mr. Wright, indicate to you in that meeting that there had been a pre-trial hearing on the previous Monday, July 16, in California, in this case?

A. I think so; I believe so. I think it was at that meeting I got that information.

Q. Did Mr. Lyon or Mr. Wright during that meeting indicate to you that I had told the Court on that occasion, that suit had been brought in Venezuela against Mr. Wright's representative or B. & W.'s representative in Venezuela?

A. I got that information somewhere, and it probably was at that meeting.

Q. Did Mr. Lewis Lyon at that time indicate to you that he had not been advised that suit had been brought in Venezuela by Hall?

A. I don't remember that. We did not go into any details about it.

(Deposition of Alfred M. Houghton.)

Q. Did Mr. Lewis Lyon indicate to you at that meeting you had on July 23, that he was going to Venezuela to find out what the situation was down there?

A. Yes, he did, and he asked my good offices to give him the names of people that he might see in the Mene Grande Oil Company. I didn't know who he should see.

Just as I have helped you in matters like that, giving [39] you names of Gulf people at your instigation, I thought it was duty to give him the names, and I went so far as to phone somebody in Pittsburgh to get the names of those people, because I was not acquainted with them. I do not know the setup of Mene Grande, and I gave him those names so that he could go down there and make what investigation he might be advised to make.

Q. Who did you phone in Pittsburgh with respect to this?

A. I think I phoned Mr. Vollmer.

Q. What names did you give to Mr. Lyon?

A. You will have to get that from him. I don't think I kept a memorandum of that. I just gave them to him over the phone, and I think he jotted them down. I don't think I have a memorandum of that. I wasn't interested, particularly.

Q. Did you give him the name of the Gulf attorney who represents Gulf or Mene Grande in Venezuela?

A. That I don't know. I don't know if I gave

(Deposition of Alfred M. Houghton.)
him a name, and I don't know that I identified the person. It was all very casual.

Q. This letter that you wrote on July 24, 1951, to Gulf Research & Development the day after you had talked to Mr. Wright and Mr. Lyon, was that with respect to this Venezuelan situation?

A. What date was that letter, please? [40]

Q. July 24, 1951.

Mr. Lyon: Wrote to whom?

The Witness: You are going to introduce a copy of this letter?

Q. (By Mr. Scofield): Who is it addressed to?

A. It is addressed to Dr. Foote. There is a mention in there about Venezuela.

Mr. Scofield: I would like to have the reporter mark the letter written by Mr. Houghton to Dr. Foote as Plaintiff's Exhibit 83 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 83, for identification.)

The Witness: I believe you have got that letter in there.

I think there should be strenuous objection to this. It relates primarily to the other matter which was under consideration, and I—

Q. (By Mr. Scofield): What was the other matter that was under consideration, Mr. Houghton?

A. It was a matter between Mr. Lyon and myself, as to offering when he sold us scratchers, if we purchased them, to let the purchase price include a royalty, which would give [41] us a license im-

(Deposition of Alfred M. Houghton.)
munity under all patents which might cover the use
of it.

Mr. Scofield: I think the letter is pertinent, and
I should like to have it marked, if you will, please.
That is Exhibit 83.

The Witness: I objected to the procedure be-
cause there might be an implied admission of
validity of the patent that we might take a royalty
under. I later secured from Mr. Lyon a statement
that that would not be so, and he would not hold us
to that, and I think I approved the purchase of the
scratches under those conditions. It was all an
entirely different matter from any Canadian patents
or anything of that sort.

Q. (By Mr. Scofield): Did you ever communi-
cate directly with an attorney by the name of
Zuloaga in Venezuela, in behalf of Mr. Lyon in
this matter?

A. No, not that I remember.

Q. Did you ever communicate directly with any
of the employees of Mene Grande in Venezuela, on
behalf of Mr. Lewis Lyon in this matter.

A. I may have written a letter down there about
it, but I don't remember it. It would certainly be a
normal thing to do. About what date would that be?
When was he, Mr. Lyon, in to see me? [42]

Q. Mr. Lyon was in to see you, according to
your previous testimony, on July 23, 1951. I have
no objection, if you care to, to ask Mr. Littlehales.
He knows or is a little more familiar with these
files than you are.

(Deposition of Alfred M. Houghton.)

A. I have a file here.

Mr. Lyon: You wrote a letter for me on——

The Witness: I wrote a letter on July 23, 1951, to Mr. Hoyt Sherman, Caracas, Venezuela.

Mr. Scofield: I should like to have the reporter mark that letter of July 23, is it, 1951, as Plaintiff's Exhibit 84 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 84, for identification.)

Mr. Lyon: I have to object to that on the ground that it is an entirely incompetent, irrelevant and immaterial matter, and further on the ground that although the letter was written for me by Mr. Houghton it was never used nor delivered, to Dr. Hoyt Sherman or anybody else. I still have the original.

Mr. Scofield: Maybe you would like to state on the record what you did with respect to this letter?

Mr. Lyon: Nothing; I have still got it.

Mr. Scofield: I mean what you did in Venezuela after you got there, with respect to the letter. [43]

Mr. Lyon: I did nothing with respect to the letter.

Mr. Scofield: Well, let the letter be marked, please.

Q. (By Mr. Scofield): Was the Venezuelan litigation discussed at all in this conference had in Pittsburgh on August 20, 1951?

A. No, only in a most general way in the sense that the parties were litigating in the United States,

(Deposition of Alfred M. Houghton.)

and we thought there was some litigation going on in Canada. I think you had advised me that you were going to file some petition, or had filed some petition, to cancel the Canadian Wright patent, and in a general way it was merely said that was the trouble here; all this litigation between the parties, the controversy, is of their own making, and that we cannot keep on being involved in this all the time, so let us make some decision as to what we should do, and it was decided that since Gulf always respected the patents of others, that having been our policy for years, we would take this situation as it existed from the patent standpoint, and since Wright had a patent in Canada covering the operations we would conduct until we had reason to know that that patent did not cover those operations or was invalid, we would respect it; and therefore we thought we should advise what we called the field to buy only B. & W. scratchers in Canada, and thus respect that patent, until conditions changed or we wished to advise otherwise. [44]

As regards the United States, we decided there was a controversy going on. The parties seemed to think that I, as patent counsel, should interpret the old contract between Wright and Hall, make a decision as to what will ultimately happen in this litigation; and I have taken the stand constantly that since there is this litigation the Court should decide such matters, and the very fact that there is a litigation shows that there is doubt, at least as to the patent situation in the United States.

(Deposition of Alfred M. Houghton.)

Q. Were you furnished a copy of a letter—

A. I don't think you let me finish my statement. I think my answer was germane, and I would like to continue.

Q. I am sorry that I interrupted you; go ahead, Are you answering a question here?

A. I am trying to.

Q. Proceed, Mr. Houghton.

A. The parties seemed to think that I should interpret that contract, when the very interpretation of it, apparently, is going to be up to the Court, and I think this very Court, and they expected me to make decisions in their favor as to the purchasing of the scratchers, and I knew enough from the contract to know that there was nothing definite at the present time from the standpoint of which side had a patent that we should have to respect, and I so reported at the conference, and said in my opinion that we were not [45] obligated to prejudge this matter, that the Court was going to judge, and we should consider that there is no patent situation in the United States that we should have to respect and, therefore, the field could buy the scratchers in the United States from whomever it pleased.

Then, we took up the Venezuelan situation; only discussed it briefly from that standpoint, paralleling it with the Canadian situation, that Hall had a patent or maybe two down in Venezuela which had come to our attention, and that we understood our operations might infringe one or more of those pat-

(Deposition of Alfred M. Houghton.)

ents through the use of scratchers other than those bought from Hall, and in line with our policy in respect to Canada, we would, for the time being, respect the Venezuelan patent; and that we should possibly issue instructions to the field to buy scratchers only from Hall or Weatherford for use in Venezuela; and so far as I know those instructions went out, and so far as I know they have been respected. But we kept the reservation in mind. [46]

If anything happened to show us that the Wright Canadian patents were invalid or the Venezuelan patents were invalid, we would change our minds.

I have not finished my investigation with respect to the Venezuelan patents, and do not know what more I can do with respect to the Canadian patents until litigation, which I understand is going on up there, is settled. So, we are respecting patents extant, and have issued instructions accordingly.

Q. Where you furnished a copy of a letter that I wrote Mr. Vollmer, on September 12, 1951?

A. I have not checked the date. I think I know the letter to which you refer.

Yes, I have a copy of that letter.

Q. Did you ever give instructions to Mr. Vollmer about answering that letter?

A. Yes. I discussed the letter with him over the phone. I was very much peeved that you had written to Mr. Vollmer, and so told you when you were in the office a few days later or shortly thereafter; and Vollmer wanted to know how to answer the letter.

(Deposition of Alfred M. Houghton.)

I mulled over it, and I think I drafted an answer, which I later destroyed. I was perturbed by it because it seemed to be another one of these inquiries by outsiders as to our plans and policies, which were certainly [47] our business; and the letter appeared to ask, "Did you do so and so" and so forth and so on.

Apparently Mr. Hall had seen Vollmer previous to that, and had somehow or other gotten information about the instructions we were about to give or had given to the field in this regard, and this was sort of a check-up by you, and it didn't come directly through me, and I didn't like it.

Later on you were in the office, and we had not answered the letter by then, and I explained my position to you, and confirmed some of the facts in the letter, and then I advised Volmer, in view of that, no answer to the letter was necessary, and none was sent.

Q. To your knowledge, there has been no answer to date then?

A. To my knowledge there has been no answer. I don't think it calls for an answer. [48]

* * *

(Deposition of Alfred M. Houghton.)

Cross-Examination

By Mr. Lyon: [49]

* * *

Q. Who is Mr. Bohart to whom you have referred?

A. Mr. Bohart is, I believe, Vice President of one of the companies. I don't have much contact with him and, particularly, in connection with this matter.

Q. Do you know what company he is the Vice President of?

A. If you will let me refer to my pamphlet again, I think I can check it.

Q. Go right ahead.

A. I don't definitely remember. There is one other matter going through this office which is entirely irrelevant to this, which is in charge of one of my assistants, and I see Mr. Bohart's name on papers in connection with that. I don't deal directly with these people. [77]

Mr. Bohart is here listed as Vice President of Gulf Research & Development Company; he is Vice President of Gulf Oil Corporation, apparently located at Tulsa; he may be Vice President of some of the subsidiaries. Do you wish me to go through the whole book to see?

Mr. Seofield: See if he is an officer of Canadian Gulf?

The Witness: He is Vice President of Canadian Altapen Oil Company; he is Vice President of

(Deposition of Alfred M. Houghton.)

Canadian Basin Oil Company; he is Vice President of Canadian Northern Plains Oil Company; Vice President of Canadian Pacific River Oil Company; he is Vice President of Canadian Plains Oil Company; he is Vice President of Canadian Shield Oil Company, and so forth. I don't want to go through the whole book on the whole thing. [78]

* * *

Q. Is it not a fact, Mr. Houghton, that several days before my call on you—and by "several" I mean one, two or three days before—on July 19, that you had telephoned to me in Los Angeles and asked me concerning the new system of invoicing sent out by B. & W. which I had advised you of, and to which you raised an objection? [83]

A. Yes; it was shortly before that that I phoned you about that.

Q. And wasn't it true that on July 19th I told you I would discuss that matter with you in Washington at our conference on July 23, and also wanted to get some information from you concerning whom to see in Venezuela, that I would be coming through here on my way to Venezuela?

A. I think that was the substance of the conversation, yes.

* * *

Q. On July 23rd you also informed me, after I had assured you that the Gulf Company's purchasing of B. & W. scratchers on the invoice in question would not be construed as an admission by you or the Gulf Company of the validity of the

(Deposition of Alfred M. Houghton.)

Wright patents, that you would accept that method of invoicing?

A. I hardly ever make that kind of a definite statement until I have had a chance to consider it. I think probably what I said was that I would be inclined to advise that it be accepted. [84]

* * *

Q. Have you a copy of that letter of September 12, 1951? A. Yes, I do have.

Mr. Lyon: I will ask that that letter be marked for identification as Exhibit Z.

(The letter referred to was marked Defendant's Exhibit Z for identification.)

Q. (By Mr. Lyon): And you have stated that you had corresponded with Dr. Vollmer concerning that letter, Exhibit Z for identification. Is that correspondence here available?

* * *

Q. Dr. Vollmer sent you the letter of September 12, 1951, Exhibit Z. Did he send it with a letter of transmittal? A. What was the date of it?

Q. September 12. [88]

A. Yes, he sent it to me over the signature of Dr. Foote, with a letter of September 21, 1951.

Mr. Lyon: I will ask that the letter of September 21, 1951, be marked for identification as Defendants' Exhibit AA.

(Deposition of Alfred M. Houghton.)

The Witness: All right.

(The document referred to was marked Defendants' Exhibit AA, for identification.) [89]

* * *

Redirect Examination

By Mr. Scofield: [95]

* * *

Q. Did you contact the legal department of any of the Canadian Gulf Oil companies before the directive was issued by Mr.— A. No.

Q. (Continuing): —Bohart or by Mr. Foote to Mr. Bohart?

A. No, sir. I don't do that; I render my report to the executives, and the rest of it is a business proposition. They do as they are advised, not necessarily as I advise them, either.

Q. That directive was to the effect that only B. & W. scratchers were to be purchased in Canada, was it not? A. Yes, sir.

Q. Was it a coincidence that that directive was issued on the same day that you had your meeting with Wright and Lyon here in Washington? [98]

A. I have not checked it. I didn't know it was the same day, but if so, it was certainly a coincidence.

* * *

[Endorsed]: Filed December 10, 1951. [99]

United States District Court, Southern District
of California, Central Division
No. 7839—WM—Civil

JESSE E. HALL,

Plaintiff,
and

WEATHERFORD OIL TOOL CO., INC., et al.,
Plaintiff-Intervenors,

vs.

KENNETH A. WRIGHT, et al.,

Defendants.

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 761, inclusive, contain full, true and correct copies of complaint; Order to Show Cause Re Preliminary Injunction; Affidavit of Jessie E. Hall; Order Denying Motion for Temporary Injunction; Answer and Counterclaim of Defendants; Stipulation of Issues to Be Litigated at Trial; Plaintiff's Statement of Facts for Pretrial Hearing; Order on Defendants' Motion to Dismiss Counterclaim for Cancellation of Contract; First Amended Complaint; Answer of Defendants to Plaintiffs' First Amended Complaint; Reply to Defendants' Counterclaims; Supplemental Pleading to Plaintiffs' First Amended Complaint—Cancellation of Agreement; Order Granting Leave to File Supplemental Complaint; Defendants' Answer to

Supplemental Pleading to Plaintiffs' First Amended Complaint; Motion of Plaintiff for Summary Judgment; Defendants' Response to Plaintiff's Motion for Summary Judgment and Defendants' Counter Motion for Summary Judgment; Order on Motions for Summary Judgment; Notice of Motion for Leave to File Supplemental and Amended Pleading; Supplemental and Amended Answer of Defendants to Plaintiffs' Supplemental Pleading and Plaintiffs' First Amended Complaint and Counterclaim for Defendants; Minutes of the Court, Dated July 16, 1951; Plaintiffs' Reply to Supplemental and Amended Answer of Defendants to Plaintiff's Supplemental Pleading and Plaintiffs' First Amended Complaint and Counterclaim for Defendants; Order to Show Cause Why Temporary Injunction Should Not Be Issued Against Plaintiff; Affidavit of Kenneth A. Wright; Memorandum in Support of Order to Show Cause; Injunction; Motion for an Order Amending and Modifying the Order Dated January 25, 1952; Motion for Summary Judgment Finding of Facts Admitted or Without Substantial Controversy and Proposed Conclusions of Law; Memorandum and Opposition to Plaintiffs' Motion for Summary Judgment; Order on Motion for Summary Judgment; Order to Show Cause Why Temporary Injunction Should Not Be Issued Against Defendants; Affidavit of Thomas E. Scofield, Order Denying Plaintiffs' Application for Temporary Injunction; Answer to Amendment of Supplemental Answer of Defendants to Plaintiffs Supplemental Pleading and Plaintiffs' First Amended Complaint and Counter-Claim for Defendants.

ants; Notice of Motion and Motion for Leave to Intervene; Second Amended Complaint (Exhibit A); Notice of Motion and Motion to Join Additional Defendants; Second Amended Complaint (Exhibit A); Memorandum in Opposition to Motion to Join Additional Defendants; Order on Motion of Plaintiff-Interveners to Join Additional Defendants; Second Amended Complaint; Answer of Defendants, Roland E. Smith, Adams-Campbell Co., and California Spring Co., Inc.; Answer and Counter-claims of defendants Kenneth A. Wright and B & W, Inc., to Second Amended Complaint; Order to Show Cause; Affidavit of Lewis E. Lyon; Stipulation; Notice of Motion and Motion to Strike From the Answer and Counterclaim of Defendants and Alternative Motion for More Definite Statement; Order Denying Application of Defendants for Temporary Injunction; Order Denying Plaintiffs' Motion to Strike, Etc.; Reply to Counterclaim of Defendants Wright and B & W; Stipulation and Order; Notice Under Title 35, U.S.C., 282; Stipulation; Plaintiffs' Charges of Unfair Competition Against Defendants and Proofs Thereon; Amendment to Second Amended Complaint and Supplemental Complaint; Supplemental Answer and Counterclaim; Reply to Supplemental Answer and Counterclaim; Memorandum of Decision; Findings of Fact and Conclusions of Law; Notice of Entry of Judgment; Judgment; Notice of Appeal, Plaintiff; Notice of Appeal, Defendants; Statement of Points on Appeal, Plaintiff; Designation of Record on Appeal, Plaintiffs; Designation of Record on Appeal, Defendants; together with the Original Plaintiff's

and Defendants' Exhibits; and copies of Reporters Transcript of Proceedings on May 25, 26, 1949; May 26, 27, 31, 1949; May 31, June 1, June 7, June 10, 1949; July 16, 1951; October 15, 1951; January 21, 1952; January 25, 1952; September 30, 1952; October 1, 1952; October 2, 1952; October 7, 1952; June 29, 1953; September 28, 1953; October 26, 1953; November 3, 1953; November 4, 1953; November 10, 1953; November 12, 1953; November 17, 1953; November 18, 1953; November 19, 1953; November 23, 1953; November 24, 1953; November 25, 1953; November 25, 1953; November 25, 1953; November 25, 1953; December 1, 1953; December 2, 1953; December 3, 1953; December 8, 1953; December 9, 1953; December 10, 1953; January 19, 1954; January 20, 1954; January 21, 1954; January 25, 1954, January 26, 1954; January 27, 1954; January 28, 1954; January 29, 1954; February 1, 1954; February 2, 1954; February 3, 1954; February 3, 1954; February 4, 1954; March 16, 1954; March 16, 1954; March 17, 1954; March 18, 1954; March 19, 1954; transmitted herewith, constitute the Record on Appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing

record amount to \$4.00, which has been paid by the Appellant, Jesse E. Hall, Plaintiff.

Witness my hand and the seal of said District Court this 10th day of January, A.D. 1955.

[Seal] EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14,626. United States Court of Appeals for the Ninth Circuit. Jesse E. Hall, Weatherford Oil Tool Company, Inc., a Corporation; Weatherford Spring Company of Venezuela, C.A., a Corporation; Hall Development Company, C.A., a Corporation; Weatherford, Ltd., a Corporation; Weatherford Internacional, S.A., De C.V., a Corporation; Nevada Leasehold Corporation, a Corporation; Barker Industrial Products, Inc., a Corporation, Appellants, vs. Kenneth A. Wright and B & W, Inc., a Corporation, Appellees. Kenneth A. Wright and B & W, Inc., a Corporation, Appellants, vs. Jesse E. Hall, Weatherford Oil Tool Company, Inc., a Corporation, et al., Appellees. Transcript of Record. In Sixty-Four Volumes, Vol. I. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed January 18, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the U. S. Circuit Court of Appeals
for the Ninth Circuit

No. 14,626

JESSE E. HALL

and

WEATHERFORD OIL TOOL COMPANY, INC.,
a Texas Corporation; WEATHERFORD
SPRING COMPANY OF VENEZUELA, C.A.,
a Venezuelan Corporation; HALL DEVELOP-
MENT COMPANY, C.A., a Venezuelan Corpora-
tion; WEATHERFORD, LTD., a Corporation
of the Province of Alberta, Canada; WEATH-
ERFORD INTERNACIONAL, S.A. DE C.V.,
a Corporation of Mexico; NEVADA LEASE-
HOLD CORPORATION, a Nevada Corpora-
tion; PARKER INDUSTRIAL PRODUCTS,
INC., a Texas Corporation,

Appellants and Cross-Appellees,

vs.

KENNETH A. WRIGHT

and

B & W, INC., a California Corporation,

Appellees and Cross-Appellants.

APPELLANTS' POINTS ON APPEAL
UNDER RULE 17(6)The Appellants do hereby adopt the Designation
of the Contents of the Record and Statement of

Points Relied Upon by Appellants on Appeal filed by Plaintiff and Plaintiff-Interveners (Appellants herein) in the U. S. District Court for the Southern District of California, Central Division, on December 15, 1954, as the statement of points upon which Appellants intend to rely in their appeal and a designation of the record material to the consideration of the appeal under the provisions of Rule 17(6) of the Rules of the United States Court of Appeals for the Ninth Circuit.

A copy of the said Designation of the Record and of the said Statement of Points as filed in the U. S. District Court is hereto attached.

Respectfully submitted,

/s/ THOMAS E. SCOFIELD,

/s/ PHILIP SUBKOW,

Attorneys for Appellants.

[Endorsed]: Filed January 25, 1955.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,626

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Texas Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Venezuelan Corporation; HALL DEVELOPMENT COMPANY, C.A., a Venezuelan Corporation; WEATHERFORD, LTD., a Corporation of the Province of Alberta, Canada; WEATHERFORD INTERNACIONAL, S.A. de C.V., a Corporation of Mexico; NEVADA LEASEHOLD CORPORATION, a Nevada Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Texas Corporation,

Appellants and Cross-Appellees,

vs.

KENNETH A. WRIGHT, and B & W, INC., a California Corporation,

Appellees and Cross-Appellants.

STATEMENT OF POINTS ON APPEAL

Pursuant to the provisions of Rule 17(6), Kenneth A. Wright and B & W, Inc., Cross-Appellants and Appellees, state they will rely upon the herein-after set forth points.

1.

The District Court erred in dismissing the coun-

terclaim of defendant-counterclaimants*. (Judgment, Paragraph VI.)

2.

The District Court erred in finding and holding that the defendant-counterclaimants were in court with unclean hands. (Finding XXVI, Conclusion of Law B.)

2-A.

The District Court erred in denying relief to defendants and defendant-counterclaimants upon the ground that defendants and defendants-counterclaimants (a) come into court with unclean hands, and that (b) during the continuance of the controversy did not maintain their hands clean. (Conclusion of Law B.)

3.

The District Court erred in finding and in adjudging Letters Patent No. 2,338,372 granted January 4, 1944, to be invalid and void as to each and every claim thereof. (Finding XXX, Judgment, paragraph 10.)

4.

The District Court erred in finding and in adjudging Letters Patent No. 2,374,317 granted April 24, 1945, to be invalid and void as to each and every claim thereof. (Finding XXXIV, Judgment, paragraph 12.)

*Because of the Appeal and Cross-Appeal, in order to avoid confusion, Appellees Cross-Appellants will refer to the parties by their designation as used in the District Court.

5.

The District Court erred in finding and in adjudging Letters Patent No. 2,392,352 granted January 8, 1946, to be invalid and void as to each and every claim thereof. (Finding XXXV, Judgment, paragraph 14.)

6.

The District Court erred in failing to find that plaintiff, Hall, and plaintiff-interveners, have infringed Letters Patent No. 2,338,372. (No Finding or Conclusion.)

7.

The District Court erred in failing to find that plaintiff, Hall, and plaintiff-interveners, have infringed Letters Patent No. 2,374,317. (No Finding or Conclusion.)

8.

The District Court erred in failing to find that plaintiff, Hall, and plaintiff-interveners, have infringed Letters Patent No. 2,392,352. (No Finding or Conclusion.)

9.

The District Court erred in finding and in basing any holding or judgment upon the finding that Letters Patent No. 2,338,372 do not teach, claim or mention a method of completion of oil wells which incorporated within its teachings and claims cementing operations performed incident to oil well completions. (Finding XV.)

10.

The District Court erred in finding that and in

basing any holding against defendants and defendant-counterclaimants upon the finding that defendants, Wright and B & W, Inc., both before and during the pendency of this litigation have unfairly and without cause notified customers and prospective customers of plaintiff and plaintiff-interveners that the customers infringed Wright's method Patent No. 2,338,372 by the use of scratchers in cementing operations incident to the completion of oil wells without intent that the notices serve as a preliminary to suit. (Finding XIV.)

11.

The District Court erred in finding and in basing any holding against defendants and defendant-counterclaimants upon the finding that defendants and defendant-counterclaimants, Wright and B & W, Inc., “* * * opposed the grant of said patent to Hall (2,671,515) at every permissible stage and by every permissible proceeding in the United States Patent Office.” (Findings X and Xa.)

12.

The District Court erred in finding that and in basing any holding against defendants and defendant counterclaimants upon the finding that notices given by Wright and B & W, Inc., to the trade were not in good faith because Letters Patent No. 2,338,-372 does not teach, claim or even mention a method of carrying out the cementing operations incident to the completion of an oil well. (Finding XV.)

13.

The District Court erred in finding and in basing a holding against defendants and defendant-counterclaimants upon the finding that the “* * * threats and notices of infringement of said method patent No. 2,338,372 were given by defendants and counter-claimants to customers of plaintiff and plaintiff-interveners in order to establish a limited monopoly in the manufacture and sale of scratchers not covered by said Letters Patent No. 2,338,372.” (Finding XVa.)

14.

The District Court erred in finding that and in basing any holding against defendants and defendant-counterclaimants upon the finding that during the pendency of this litigation the said defendants and defendant-counterclaimants have unfairly and without cause notified customers of plaintiff and plaintiff-interveners that the customers infringed the Wright Patent No. 2,374,317, and that the said notices given to the trade both directly and indirectly were without intent that the notices serve as a preliminary to suit.

15.

The District Court erred in finding that and in basing any holding upon the finding that the notices of infringement of Letters Patent No. 2,374,317 given by defendants and defendant-counterclaimants were given in order to establish a limited monopoly in the manufacture and sale of scratchers not covered by said Letters Patent No. 2,374,317. (Finding XVe.)

16.

The District Court erred in finding that and in basing any holding or judgment against defendants and defendant-counterclaimants upon the finding that defendants and defendant-counterclaimants, Wright and B & W, Inc., caused Scratchers, Inc., to be organized; caused Scratchers, Inc., to acquire title to the Black & Stroble Patent No. 2,151,416, and caused suits to be filed against Weatherford Oil Tool Company, Inc., plaintiff-intervener; S & R Tool Company, and Weatherford Oil Tool Company, Inc., and in “* * * attacking the Hall Mexican Patent No. 47,661.” (Findings XVI and XVII.)

17.

The District Court erred in finding that the suits brought by Scratchers, Inc., and set forth in Finding of Fact XVI “* * * were instituted to serve as a basis for sales propaganda to the trade in the state or country in which they were filed.” (Finding XXIII.)

18.

The District Court erred in finding that defendants and defendant-counterclaimants have employed, and practiced techniques to influence the placing of business by the larger oil companies, which techniques entailed everything from veiled threats to adroit suggestions in an effort to make the oil companies feel more secure, patent-infringement wise, if they would direct their business to defendants and defendant-counterclaimants. (Finding XXIV.)

19.

The District Court erred in finding and in basing any holding against defendants and defendant-counterclaimants upon the finding that any suit, action or proceeding instituted by defendants or defendant-counterclaimants in this country or in any other country were tried primarily to the trade while pretending to look to this court for justice. (Finding XXV.)

20.

The District Court erred in finding that defendants and defendant-counterclaimants have, during this litigation, resorted to self-help while pretending to look to the court for justice. (Finding XXVa.)

21.

The District Court erred in denying relief to defendants upon the ground that during pendency of the action that the defendants and defendant-counterclaimants have resorted to self-help. (Conclusion of Law C.)

22.

The District Court erred in its conclusion that it failed to allow the defendants and defendant-counterclaimants their taxable costs occasioned in this action. (Conclusion of Law E.)

23.

The District Court erred in failing to specifically find that plaintiff, Hall, had knowingly misrepresented facts to the Patent Office and had by such

means misled the Patent Office in the granting of the Hall Patent No. 2,671,515.

24.

The District Court erred in failing to specifically find that the action of plaintiff, Hall, before the United States Patent Office fell strictly within the holding of *Precision Instruments Co. v. Automotive Co.*, 324 U. S. 806, and in failing to apply against Hall the admonitions of the Supreme Court as set forth in such decision.

25.

The District Court erred in failing to hold that the Hall application, Serial No. 556,191, eventuated in Letters Patent No. 2,671,515, was not a legal continuation-in-part of Hall application, Serial No. 388,891.

26.

The District Court erred in failing to find that Letters Patent No. 2,671,515 was invalid and void because the application therefor was filed more than a year after the devices illustrated in said application were on sale, had been sold and had been shown in public print for more than a year prior to the filing of the application for said Letters Patent.

27.

The District Court erred in failing to find the party Hall was guilty of unfair practice when he filed applications for Letters Patent in foreign countries which were knowingly filed contrary to the provisions of the laws of such foreign countries for

the sole purpose of and as a means of illegally interfering with the sale and distribution of scratchers of defendants and defendant-counterclaimants.

KENNETH A. WRIGHT,
B & W, INC.,
Appellees and Cross-Appellants.

LYON & LYON,
By /s/ LEWIS E. LYON.

Receipt of copy acknowledged.

[Endorsed]: Filed March 12, 1955.

In the United States Court of Appeals
for the Ninth Circuit

No. 14,626

JESSE E. HALL, WEATHERFORD OIL TOOL
COMPANY, INC., a Texas Corporation;
WEATHERFORD SPRING COMPANY OF
VENEZUELA, C.A., a Venezuelan Corpora-
tion; HALL DEVELOPMENT COMPANY,
C.A., a Venezuelan Corporation; WEATHER-
FORD, LTD., a Corporation of the Province of
Alberta, Canada; WEATHERFORD INTER-
NACIONAL, S.A., de C.V., a Corporation of
Mexico; NEVADA LEASEHOLD CORPORA-
TION, a Nevada Corporation; PARKER
INDUSTRIAL PRODUCTS, INC., a Texas
Corporation,

Appellants and Cross-Appellees,

vs.

KENNETH A. WRIGHT and B & W, INC., a
California Corporation,

Appellees and Cross-Appellants.

STIPULATION RELATIVE TO EXHIBITS

It appearing that because of the number and
volume of documentary exhibits designated herein
by appellants-cross-appellees and appellees-cross-
appellants, that the cost of printing and reproduc-

ing the exhibits would be extremely high, and the parties having agreed together as to certain of the said exhibits which are to be reproduced as set forth in the schedules hereto annexed, It Is Hereby Stipulated and Ordered that all the exhibits designated by the parties to this appeal other than those specifically set forth in the schedules hereto annexed shall be included in the record on appeal and considered in their original form as introduced in evidence at the trial without reproduction.

That the exhibits appearing in the schedules hereto attached and which are respectively marked "Schedule A, Exhibits designated by Appellants and Cross-Appellees"; "Schedule A-1, Exhibits designated by Appellants and Cross-Appellees to be supplied by Appellants and Cross-Appellees"; "Schedule B, Exhibits designated by Appellees and Cross-Appellants"; "Schedule B-1, Exhibits designated by Appellees and Cross-Appellants to be supplied by Appellees and Cross-Appellants" be reproduced in the following manner:

That as to both Schedules A and B hereto, that the Clerk of this Honorable Court may prepare seven copies of the said exhibits listed in said Schedules A and B, and that appellants-cross-appellees and appellees-cross-appellants shall provide to the clerk for inclusion in the record seven copies of the schedules listed in their said Schedules A-1 and B-1. That the seven copies of the exhibits thus designated shall be included in the record, five

copies to be retained by the Court and one copy for appellants-cross-appellees and one copy for appellees-cross-appellants.

/s/ THOMAS E. SCOFIELD, P.S.,

/s/ PHILIP SUBKOW,

Attorneys for Appellants and
Cross-Appellees.

LYON & LYON,

By /s/ LEWIS E. LYON,

Attorneys for Appellees and
Cross-Appellants.

SCHEDEULE A

Exhibits designated by Appellants and Cross-Appellees and to be included in folio:

Exhibits 34, 35, 37, 38, 39, 41, 81, 88-A, 119, 120, 171, 182, 193, 216, 216-A, 222, 223, 224, 225, 226, 227, 229, 234, 248, 249, 250, 272-B, 278, 280-A, 285, 286, Q-1, Q-2.

SCHEDEULE A-1

Exhibits designated by Appellants and Cross-Appellees to be supplied by Appellants and Cross-Appellees:

Exhibits: 37, 38, 88-A, 222, 223, 224, 225, 226, 227, 229, 234, 272-B, 286, Q-1, Q-2.

SCHEDULE B

Exhibits designated by Appellees and Cross-Appellants and to be included in folio: (Defendant)

Exhibits A, B, V, W, X, DD, SS, VV, XX, YY, ZZ, AAA, BBB, DDD, EEE, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, QQQ, SSS, WWW, XXX, YYY, ZZZ, AAAA, HHHH, AG, AI, BJ, BN, BQ, BR, BS, BU, BU-1, BV, (or Exhibit 152, the same exhibit having been marked Plaintiff's Exhibit 152), BW, BX, BY, CQ, CT, CX-1, CZ, DS, DV, DV-1, EY, EZ, FE; and Plaintiff's Exhibits 1, 4, 14, 45, 64, 67, 83, 231, 232, 233.

SCHEDULE B-1

Exhibits designated by Appellees and Cross-Appellants to be supplied by Appellees and Cross-Appellants:

Exhibits HH, NN, NNNN-21-b, NNNN-23-b, NNNN-24-a, AP-10, AP-11, AU-1, AU-2, AS-1, AS-2, AS-7, BD, BE, BK.

Receipt of copy acknowledged.

[Endorsed]: Filed April 15, 1955.